

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT'S
FINANCIAL AND ADMINISTRATIVE CONTROLS
NEED IMPROVEMENT**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-767

THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT'S
FINANCIAL AND ADMINISTRATIVE
CONTROLS NEED IMPROVEMENT

MARCH 1988



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Auditor General

March 8, 1988

P-767

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 448
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Alameda-Contra Costa Transit District. The district needs to develop a balanced or a surplus budget, identify causes of significant budget variances, promptly negotiate an agreement to receive Measure B revenues, ensure that only appropriate travel and entertainment expenses are paid, and implement a policy on outside employment that prohibits employees from using district resources for nondistrict-related business.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	S-1
INTRODUCTION	1
AUDIT RESULTS	
I THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT NEEDS TO IMPROVE ITS BUDGET CONTROLS	7
CONCLUSION	25
RECOMMENDATIONS	26
II THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT HAS WEAK CONTROLS OVER EXPENSES FOR ITS BOARD OF DIRECTORS AND OFFICERS	29
CONCLUSION	40
RECOMMENDATIONS	41
III ATTORNEYS AT THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT USED DISTRICT RESOURCES TO CONDUCT THEIR PRIVATE LAW PRACTICES	43
CONCLUSION	49
RECOMMENDATIONS	50
APPENDICES	
A ALAMEDA-CONTRA COSTA TRANSIT DISTRICT COMPARISON OF ACTUAL REVENUES, SUBSIDIES, AND EXPENSES WITH BUDGET AMOUNTS FOR THE TWELVE MONTHS ENDED JUNE 30, 1985	53
B ALAMEDA-CONTRA COSTA TRANSIT DISTRICT COMPARISON OF ACTUAL REVENUES, SUBSIDIES, AND EXPENSES WITH BUDGET AMOUNTS FOR THE TWELVE MONTHS ENDED JUNE 30, 1986	55
C ALAMEDA-CONTRA COSTA TRANSIT DISTRICT COMPARISON OF ACTUAL REVENUES, SUBSIDIES, AND EXPENSES WITH BUDGET AMOUNTS FOR THE TWELVE MONTHS ENDED JUNE 30, 1987	57

TABLE OF CONTENTS (Continued)

	<u>Page</u>
APPENDICES (Continued)	
D ALAMEDA-CONTRA COSTA TRANSIT DISTRICT COMPARISON OF PROJECTED REVENUES, SUBSIDIES, AND EXPENSES WITH BUDGET AMOUNTS FOR THE TWELVE MONTHS ENDED JUNE 30, 1988	59
E LEGISLATIVE COUNSEL'S OPINION ON THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT	61
RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL'S REPORT	
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT	73

SUMMARY

RESULTS IN BRIEF

The Alameda-Contra Costa Transit District (district) has insufficient financial and administrative control over its operations. During our review, we found the following specific conditions:

- For fiscal years 1984-85, 1985-86, and 1986-87, the district has incurred operating budget deficits, and, as of February 3, 1988, the district anticipated an operating budget deficit of up to \$7.1 million for fiscal year 1987-88;
- In paying for \$41,668 of the \$91,957 in travel and entertainment expenses that the district paid for in calendar years 1986 and 1987, the district failed to comply with board policy or sound internal accounting controls and may have violated state law; and
- The district's legal staff used district resources, including staff, equipment, and facilities, to conduct private law practices.

BACKGROUND

The district operates and maintains 818 buses, primarily in Alameda and Contra Costa counties, and provides bus service to approximately 240,000 weekday passengers. The district is governed by a board of directors, consisting of seven members who are elected by the voters of Alameda and Contra Costa counties. The board of directors appoints a general manager, a secretary, and an attorney for the district.

PRINCIPAL FINDINGS

The Alameda-Contra Costa Transit District Needs To Improve Its Budget Controls

The district has insufficient control over its financial operations. For fiscal years 1984-85, 1985-86, and 1986-87, the district's expenses have exceeded its revenues and subsidies, resulting in operating budget deficits. As of February 3, 1988, the district also anticipated an operating budget deficit of up to \$7.1 million for fiscal year 1987-88. These deficits have contributed to a decrease in the district's cash and investments from \$37.8 million as of June 30, 1984, to \$7.4 million as of November 30, 1987. If the district continues to incur large deficits, the district will deplete its cash and investments.

Weaknesses in the district's budgeting process have contributed to its financial difficulties. Specifically, the district has inaccurately estimated operating revenues and expenses, and it has produced budget variance reports that are unreliable. To eliminate its operating budget deficits, the district needs either to increase its revenues and subsidies significantly or to reduce its expenses significantly, or both. The district has taken some corrective actions to reduce its expenses, including reducing the number of staff positions and the number of hours that its buses travel each month. However, it has not taken sufficient corrective action to remedy its deficits.

To assist in reducing the district's deficit, Measure B, a sales tax of one-half cent in Alameda County, will provide the district approximately \$115 million over the next 15 years. According to the Legislative Counsel, the district can legally use these funds to offset its operating deficits.

The Alameda-Contra Costa Transit District
Has Weak Controls Over Expenses For
Its Board of Directors and Officers

For \$41,668 of the \$91,957 in travel and entertainment expenses that it paid for in calendar years 1986 and 1987, the district failed to comply with board policy or sound internal accounting controls and may have violated the Penal Code. Specifically, the district paid the expenses of directors who did not sign their expense reports, paid the expenses of directors and an officer who did not obtain the approval of the district's former general manager or the district's secretary, and paid expenses that were not supported with receipts. As a result of these weaknesses, the district cannot be certain that these payments were made for official district business. In fact, the district's weak controls did result in improper payments. The district paid \$715 for the personal expenses of a director who had charged these expenses to a credit card that was in the name of the district as well as the director. Also, the district paid \$3,368 for directors' expenses that exceeded the amounts allowed per month, and it improperly lent and paid public funds. While our audit did not identify large dollar amounts of improper expenses, the frequency and variety of problems indicate that the district is vulnerable to much larger losses of funds because of its weak controls.

Attorneys at the Alameda-Contra Costa
Transit District Used District Resources
To Conduct Their Private Law Practices

Although not specifically authorized by the district's board of directors, five of the district's six attorneys used district resources, including staff, equipment, and facilities, to conduct their private law practices in calendar years 1985, 1986, and 1987. For example, the Alameda County Superior Court paid three of the six attorneys over \$3,400 for arbitration services on 23 occasions, some of which occurred at the

district's offices during business hours. Further, the district paid over \$1,200 for yellow page and white page listings in the telephone book for its attorneys. However, because the district did not maintain sufficient records, the exact value of the district resources used cannot be determined.

The attorneys stated that the district has permitted private law practices as long as the law practices did not interfere with district business. Also, the attorneys stated that, because they have worked more than the required hours per week for the district, the time that they spent in private practice was offset by the extra hours that they worked for the district.

CORRECTIVE ACTION

The district has taken action to correct some of the problems discussed in this report. The board of directors has adopted a new board policy for travel and entertainment expenses that requires claimants to prepare and sign their own expense reports. Also, the district will not issue bank, telephone, or gasoline credit cards to any director, officer, or other employee of the district. Finally, the district has adopted a policy that prohibits private law practices, and the district will eliminate the yellow and white page listings in the telephone book.

RECOMMENDATIONS

To improve its financial and administrative controls over its operations, the district should take the following actions:

- Develop a balanced or surplus budget based on well-documented and reliable estimates of revenues, subsidies, and expenses;
- Identify the causes of significant budget variances and take prompt corrective action;

- Ensure that only appropriate travel and entertainment expenses are paid by requiring the board of directors and district employees to follow state law, board policies, and sound internal accounting controls;
- Recover all overpayments made to directors; and
- Implement a policy on outside employment that prohibits employees from using district resources for nondistrict-related business.

AGENCY COMMENTS

The district acknowledges that the principal findings of the report are substantive and serious. However, the district states that, in most cases, specific action to correct past practices has already been taken. Further, on March 3, 1988, the district's interim general manager informed us that he had prepared a revised operating budget for fiscal year 1987-88. The revised operating budget estimates an operating deficit of \$1.2 million. The interim general manager intended to seek the board of directors' approval of the revised operating budget on March 9, 1988.

INTRODUCTION

The Alameda-Contra Costa Transit District (district) operates 818 buses that provide transit services to approximately 240,000 weekday passengers in Alameda and Contra Costa counties, and, to a lesser extent, to San Francisco and San Mateo counties. The district's headquarters are in Oakland.

In the district's budget for fiscal year 1987-88, the district estimated that it will receive approximately \$47.3 million in total revenues and that passenger fares will account for approximately \$32.3 million. In addition, the district estimated that it will receive subsidies of approximately \$70.2 million (60 percent) from federal, state, and local operating assistance.

In the district's budget, the district planned to spend \$117.5 million for operating expenses for fiscal year 1987-88. Salaries, wages, and fringe benefits comprised over 76 percent of its total budget. As of January 22, 1988, the district employed 1,687 bus operators and maintenance workers, 81 percent of the district's 2,094 employees. The remaining 407 employees (19 percent) are administrative employees.

Organization of the District

As specified in the California Public Utilities Code, the district is governed by a board of directors that supervises and regulates every transit facility owned and operated by the district. The board of directors is also responsible for administering the district's affairs and for approving the district's budget.

The voters of Alameda and Contra Costa counties elect the seven directors, who serve four-year terms. Five directors represent wards, which are specific areas in the two counties, and two directors at-large represent all of the voters of the district. The seven directors select a director to serve as president of the board of directors. Section 24908 of the California Public Utilities Code authorizes the district to pay directors fees of \$100 per day for each attendance at a meeting of the board and for each day a board member is engaged in authorized district business. However, no director may receive more than \$500 in a calendar month for these activities. In addition, the directors receive traveling and personal expenses necessary in the performance of their duties. For fiscal year 1987-88, the district estimated costs of \$145,000, including director fees and travel and entertainment expenses, for its board of directors.

The board of directors appoints the officers of the district: the general manager, the secretary, and the attorney for the district. The general manager controls the acquisition, construction, maintenance, and operations of the district's facilities and administers the business and personnel affairs of the district. The general manager is also responsible for the operations of the district. In January 1988, the district's former general manager retired, and, as of January 4, 1988, the board of directors contracted with an interim general manager to administer the district for the six-month period ending July 1, 1988.

The district's secretary maintains all books, records, and papers of the board's proceedings and of the board's committees. The attorney for the district represents the district in all legal matters and acts as the legal advisor to the board and to other district officers and staff. In addition, this attorney supervises other attorneys in the legal department. In November 1987, the board replaced the attorney for the district with an acting attorney for the district.

SCOPE AND METHODOLOGY

The primary purpose of this audit was to determine whether the district has sufficient administrative and financial controls over its budget, the expenses of its board of directors and officers, and the operations

of the legal department. We reviewed the district's budget for fiscal year 1984-85 through fiscal year 1987-88, and we obtained the annual and the monthly financial statements for the same time periods. We also reviewed the district's policies and procedures and the minutes of the board of directors. We determined whether the district operated within its budget for the four fiscal years that we reviewed, and we identified the funds that the district used to finance any deficits. Further, we reviewed how accurately the district predicted its revenues, subsidies, and expenses.

To determine whether the district prepared and used reports that compared actual revenues, subsidies, and expenses to the budgeted amounts, we reviewed the district's procedures for regularly monitoring its budget. We also determined how the district estimated monthly amounts of the district's revenues, subsidies, and expenses.

Finally, we obtained a legal opinion from the Legislative Counsel to determine whether the district can legally use tax revenues generated by Measure B to offset its operating budget deficit.

Because we did not conduct an audit of the district's financial statements in accordance with generally accepted auditing standards, we do not express an opinion on any of the financial statements referred to in this report. Also, we did not assess the district's efficiency against performance standards contained in the

Transportation Development Act. Finally, we limited our review to the district's operating budget and did not review any other budgets, including capital outlay budgets.

To determine whether the travel and entertainment expenses of the board directors and district officers complied with state law, board policy, and sound internal accounting controls, we reviewed the expenses of the directors and officers for calendar years 1986 and 1987. Specifically, we determined whether the directors and the officers had signed their expense reports and whether the expense reports had been approved by appropriate district officials, including the general manager and the secretary. In addition, we reviewed the expense reports to determine whether the district had made overpayments to directors and district officers. Finally, we reviewed the directors' expenses to determine whether the district made improper loans or made payments using public funds.

Finally, to determine whether the legal staff of the district used district resources to conduct private law practices during calendar years 1985 through 1987, we reviewed the conflict-of-interest statements of all of the attorneys for the district. In addition, we obtained written statements from four of the attorneys on their private law practices; two attorneys would not provide us written statements. We also reviewed district records, including the personnel files and the minutes of the board of directors, to determine whether the district authorized or approved private law practices.

AUDIT RESULTS

I

THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT NEEDS TO IMPROVE ITS BUDGET CONTROLS

The Alameda-Contra Costa Transit District has insufficient control over its financial operations. For fiscal years 1984-85, 1985-86, and 1986-87, the district's expenses have exceeded its revenues and subsidies, resulting in operating deficits. As of February 3, 1988, the district also anticipated an operating deficit of up to \$7.1 million for fiscal year 1987-88. These deficits have contributed to a decrease in the district's cash and investments from \$37.8 million as of June 30, 1984, to \$7.4 million as of November 30, 1987. If the district continues to incur large operating deficits, the district will deplete its cash and investments. Weaknesses in the district's budgeting process have contributed to its financial difficulties. Specifically, the district has inaccurately estimated operating revenues and expenses, and it has produced budget variance reports that are unreliable.

To balance its budget, the district must increase its revenues and subsidies significantly, reduce its expenses significantly, or both. Although the district has taken some corrective actions to reduce its expenses, including reducing the number of staff positions

and the number of hours that its buses travel each month, it has not taken sufficient corrective action to remedy its deficit.

To assist in reducing the district's deficit, Measure B, a sales tax of one-half cent in Alameda County, will provide the district approximately \$115 million over the next 15 years. According to the Legislative Counsel, the district can legally use these funds to offset its operating deficits.

Preparation of the District's Annual Operating Budget

The district prepares an annual operating budget, which includes its estimated operating revenues, subsidies, and expenses. Operating revenues include fares collected from passengers and interest income. Subsidies are funds provided from other organizations, including the federal and state governments. Expenses are the costs of operating the district and include wages, fringe benefits, and fuel.

In preparing the operating budget, the district's finance department, in cooperation with other departments of the district, prepares estimates of the revenues, subsidies, and expenses that the district anticipates from July 1 through the following June 30. An operating budget is balanced when estimated revenues and subsidies equal estimated expenses. If estimated revenues and subsidies are greater than estimated expenses, the district has an estimated operating surplus. If the estimated expenses exceed estimated revenues

and subsidies, the district has an estimated operating deficit. When the board of directors reviews and approves a budget with an estimated operating deficit, the district must either use its available resources, such as its cash and investments, or borrow money to fund its operations.

Under the principles of sound budgeting, an organization such as the district must develop accurate estimates of its operating revenues and subsidies. To balance its budget, the organization must not allow its operating expenses to exceed these estimated operating revenues and subsidies. Without a balanced budget, the organization will either have to use its working capital, for example, cash and short-term investments, or have to borrow money to continue operating. After developing the budget, the organization must control expenses to prevent excess spending. During the fiscal year, the organization should supply its management with prompt and accurate reports that indicate actual revenues, subsidies, and expenses. In addition, these reports should accurately identify the causes of deviations from the budget so that management can take prompt corrective action, such as increasing its revenues or decreasing its expenses.

Inaccurate Estimating of Revenues and Expenses

During our review of the district's budgeting process, we compared the actual amounts and budgeted amounts for the district's revenues, subsidies, and expenses since fiscal year 1984-85, and we

found that the district generally overestimated its revenues and always underestimated its expenses. As a result, the district inaccurately estimated its surplus and deficit for each of the last three fiscal years and the current fiscal year. Specifically, in fiscal year 1984-85, the district estimated an operating budget deficit of approximately \$3,426,000. However, the district's actual operating deficit was approximately \$4,677,000, over \$1,251,000 more than budgeted. In fiscal year 1985-86, the district estimated an operating budget surplus of approximately \$224,000, but it had an operating deficit of approximately \$1,385,000. Further, in fiscal year 1986-87, the actual operating deficit was approximately \$5,626,000 although the district estimated that it would have a \$2,038,000 deficit. In the current fiscal year of 1987-88, the district also estimated that it would have a balanced budget. However, as of February 3, 1988, the district projected that it will instead have an operating deficit of \$7,087,000. Table 1 shows the actual amounts, the budgeted amounts, and the difference between the actual and budgeted amounts since fiscal year 1984-85.

TABLE 1

**COMPARISON OF BUDGETED AND ACTUAL AMOUNTS FOR THE
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
FISCAL YEARS 1984-85 THROUGH 1987-88
(UNAUDITED)**

	<u>Budget</u>	<u>Actual</u>	<u>Under (Over) Budget</u>
<u>1984-85</u>			
Revenues	\$ 42,041,000	\$ 42,451,645	\$ (410,645)
Subsidies	56,168,059	56,403,674	(235,615)
Expenses	101,635,000	103,532,787	(1,897,787)
Surplus/(Deficit)	(3,425,941)	(4,677,468)	(1,251,527)
<u>1985-86</u>			
Revenues	45,567,993	44,136,559	1,431,434
Subsidies	62,793,006	65,591,722	(2,798,716)
Expenses	108,137,061	111,113,026	(2,975,965)
Surplus/(Deficit)	223,938	(1,384,745)	(1,608,683)
<u>1986-87</u>			
Revenues	46,752,000	46,372,881	379,119
Subsidies	64,444,000	67,102,902	(2,658,902)
Expenses	113,234,000	119,101,463	(5,867,463)
Surplus/(Deficit)	(2,038,000)	(5,625,680)	(3,587,680)
<u>1987-88*</u>			
Revenues	47,313,000	45,254,044	2,058,956
Subsidies	70,161,000	69,495,031	665,969
Expenses	117,474,000	121,836,093	(4,362,093)
Surplus/(Deficit)	0	(7,087,018)	(7,087,018)

Source: Alameda-Contra Costa Transit District

* Estimated amounts for fiscal year 1987-88 as of February 3, 1988.

In addition to inaccurately estimating budget surpluses and deficits, the district overestimated its farebox revenues, the largest category of the district's revenues and subsidies, for fiscal years 1984-85 through 1987-88. For example, in fiscal year 1984-85, the district estimated that its farebox revenues would be \$32,818,000. However, the district's actual farebox revenues were approximately \$2,127,000 less than budgeted. In fiscal year 1985-86, the district estimated that its farebox revenues would be approximately \$32,053,000; instead they were approximately \$30,537,000. Further, in fiscal year 1986-87, the actual farebox revenues were approximately \$32,216,000 although the district had budgeted \$32,570,000. Again, in the current fiscal year 1987-88, the district estimated \$32,266,000 for farebox revenues. However, as of February 3, 1988, the district believed that it will earn only \$30,040,000.

To further add to the district's operating budget deficits, the district underestimated expenses for fiscal years 1984-85 through 1987-88. For example, in fiscal year 1984-85, the district estimated its expenses as approximately \$101,635,000. However, the district's actual expenses were approximately \$1,898,000 more than budgeted. In fiscal year 1985-86, the district estimated expenses of approximately \$108,137,000, but they were approximately \$111,113,000. Further, in fiscal year 1986-87, the actual expenses were approximately \$119,101,000 although the district had budgeted approximately \$113,234,000. Again, in the current fiscal year 1987-88, the district estimated \$117,474,000 for expenses. However, as of February 3, 1988, the district projected it will have expenses of \$121,836,000.

Appendices A, B, and C compare the budgeted amounts, the actual amounts, and the difference between the actual and budgeted amounts for each type of revenue, subsidy, and expense for fiscal years 1984-85 through 1986-87. In addition, Appendix D compares the budgeted amounts, the district's projected amounts as of February 3, 1988, and the difference between the budgeted and the projected amounts for each type of revenue, subsidy, and expense for fiscal year 1987-88.

Since fiscal year 1984-85, the district has funded its operating deficits with its working capital. Working capital is the district's current assets minus its current liabilities and includes cash and investments. Since the district has used its working capital to fund its operating deficits, the district's working capital has decreased from \$24,608,000 as of June 30, 1984, to \$9,255,000 as of November 30, 1987. Table 2 shows the amounts of the district's working capital and its cash and investments between June 30, 1984, and November 30, 1987.

TABLE 2
AMOUNTS OF WORKING CAPITAL AND
CASH AND INVESTMENTS

<u>Date</u>	<u>Working Capital</u>	<u>Cash and Investments</u>
June 30, 1984	\$24,608,000	\$37,791,000
June 30, 1985	24,205,000	17,641,000
June 30, 1986	23,966,000	18,767,000
June 30, 1987	17,200,000	21,924,000
November 30, 1987	9,255,000	7,434,000

Source: Alameda-Contra Costa Transit District

The District Needs Better
Controls Over Its Expenses

We attempted to determine how the district arrived at its estimates of expenditures for fiscal year 1987-88. However, the district did not always have the records to show how it determined the amount that it budgeted for each expense contained in the budget. Without such records, the district's finance department, which should control expenses, does not have data on specific expenses that are authorized in the budget for the specific expense category and, thus, cannot control those expenses. For example, the district does not have a listing of its budgeted rent and lease expenses for fiscal year 1987-88. Consequently, although the district estimated that expenses

for rents and leases for fiscal year 1987-88 would be approximately \$1,464,000, it will have to spend over \$1,808,000, nearly 24 percent more than budgeted. Similarly, the district estimated that its fuel and oil expenses for the entire 1987-88 fiscal year would be \$4,565,256, yet it will have to spend over \$920,000 (25 percent) more than it originally had estimated.

Further, during fiscal years 1986-87 and 1987-88, the district occasionally paid for expenses that were not in the budget although the district was incurring operating deficits. For example, at a cost of \$137,250, the board of directors authorized the district to pay for a pension plan for the directors that would provide retirement benefits of up to \$250 per month for each director. A director is eligible to receive the benefits if a director is 55 years old and has served the district for five years.

Unreliable Reporting of Budget Variances

The district's finance department prepares monthly variance reports for the district, which compare actual revenues, subsidies, and expenses with the district's budgeted amounts and show budget variances. The variance reports should be a valuable tool for monitoring whether the district is staying successfully within its budget plan; however, we found the district's variance reports to be unreliable.

To be an effective tool for controlling the district's finances, the monthly budget should reflect actual variations in the district's revenues, subsidies, and expenses. The district can analyze historical trends to identify patterns of fluctuation throughout a fiscal year. It can then use these patterns to apportion more reliably the budgeted amounts of revenues, subsidies, and expenses for each month.

In the district's variance reports, the finance department apportions all budgeted amounts equally throughout the 12-month fiscal year although the district does not receive its revenues and subsidies nor incur and pay its expenses equally throughout the fiscal year. As a result, the variance reports may not accurately reflect monthly fluctuations over the course of the fiscal year. For example, the farebox revenues have historically fluctuated throughout the fiscal year. In fiscal year 1986-87, the monthly farebox revenues ranged from a low of \$2,362,773 to a high of \$2,979,256, a difference of \$616,483 (21 percent). However, the variance reports show \$2,714,167 as the monthly budgeted amounts for farebox revenues. Operator wages also fluctuate significantly throughout the fiscal year. In fiscal year 1986-87, monthly operator wages ranged from \$2,875,353 to \$3,260,191. However, the district's variance reports show that budgeted operator wages were \$2,867,417 each month.

In addition to unreliable estimates, the variance reports also contain other errors. In the year-end variance report for fiscal year 1986-87 that the district provided us, the district calculated the variance using the wrong budgeted amounts. The district used the budgeted amounts for fiscal year 1987-88 instead of the budgeted amounts for fiscal year 1986-87. As a result, the report depicted a balanced budget when it really should have shown a budget deficit of \$2,037,000. Further, some variance reports contain mathematical mistakes. For example, the June 30, 1987, variance report contains addition errors of \$500,000. As a result of the unreliable estimates and the errors in the district's variance reports, at any point during the fiscal year, the district may be receiving erroneous information on its progress in meeting budget plans for the fiscal year and may make faulty decisions based on that information.

Budget Variance Reports Are Insufficient
and Are Not Submitted Promptly

During fiscal years 1984-85, 1985-86, and 1986-87, the district provided brief monthly variance reports to the board of directors that identify budget variances only by type of revenue, subsidy, and expense. However, these reports do not identify to which specific departments the significant variances belonged. Furthermore, the variance reports do not explain the causes of significant variances. When variance reports do not identify these factors, the board of directors may not know which departments operate either within

their budgets or significantly over their budgets. Also, the board of directors may have difficulty determining whether corrective actions are needed.

Beginning in fiscal year 1987-88, the general manager provided the board of directors with variance summary budget reports that contain an explanation of the budget variance for each department or cost center. However, the explanations do not always identify the causes of the variances. Further, the explanations do not suggest any corrective actions. For example, maintenance labor costs in the October 1987 report exceeded the budget by \$107,289, but the report does not explain why the maintenance costs exceeded the budget or what corrective actions needed to be taken. The explanation states only that the wages and fringe benefits exceeded the budget.

Further, for fiscal year 1987-88, the board of directors either did not receive all of the variance reports or did not receive them promptly. Specifically, as of January 20, 1988, the board had not received the budget variance summary reports for the one-month periods ended September 30, 1987 and November 30, 1987. In addition, the finance committee of the board did not receive the variance report for the one-month period ended October 31, 1987, until January 13, 1988, over two months after the end of the period. The board did not receive the variance reports promptly because the finance department did not receive the accounting information until 20 to 25 days after the end of the period. In addition, the finance department took several weeks to

meet with the department chiefs to discuss the variances before presenting the report to the board of directors. However, if the budget variance summary reports are not prepared and presented promptly to the board of directors, the district may not take corrective actions quickly.

Insufficient District Action
To Reduce Operating Deficits

The district's efforts to remedy its operating deficits for the last three fiscal years have been insufficient. Further, the district's attempts to balance its current 1987-88 fiscal year budget have not been successful. As of February 3, 1988, the district estimated that its operating deficit for the fiscal year 1987-88 will be approximately \$7.1 million because its revenues and subsidies were estimated to be \$114.7 million, \$2.7 million less than budgeted, while its expenses were estimated to be \$121.8 million, \$4.4 million more than budgeted.

To eliminate operating deficits, the district needs either to increase its revenues and subsidies significantly, to reduce its expenses significantly, or both. The district's ability to increase its subsidies is limited because other governmental entities control the amounts of subsidies that the district receives. For example, the district cannot increase its property tax subsidies because the counties determine the amount that the district will receive. Nevertheless, the board of directors does control the fare amounts that

the district charges. However, at the November 24, 1987, meeting, the board voted to defer increasing the adult fare from 75 cents to 80 cents, and, as of February 19, 1988, the adult fare remained at 75 cents.

Since subsidies are controlled by other entities and the board of directors voted to defer any fare increase, the district's remaining alternative for balancing its budget is to reduce its expenses. Because wages for bus drivers are the largest operating expense item, the board reduced the number of budgeted driver positions to 1,257 for fiscal year 1987-88. However, at the beginning of fiscal year 1987-88, the district actually had 1,394 drivers. Further, the district has continued to exceed the budgeted number of drivers for the first six months of fiscal year 1987-88. As a result, the district has spent an estimated \$1.7 million for the drivers that were not budgeted. While the district stated that it may take up to approximately four months to reduce routes significantly and thereby reduce the number of drivers significantly, the district still continues to have more filled positions than it has budgeted after the first six months of the current fiscal year. Table 3 shows the number of actual bus drivers and the budgeted number of positions for each month since July 1987.

TABLE 3
NUMBER OF BUDGETED BUS DRIVER POSITIONS
AND THE ACTUAL NUMBER OF BUS DRIVERS
JULY 1987 THROUGH DECEMBER 1987

<u>Date</u>	<u>Number of Budgeted Positions</u>	<u>Number of Drivers*</u>
July 1987	1,257	1,380
August 1987	1,257	1,368
September 1987	1,257	1,351
October 1987	1,257	1,335
November 1987	1,257	1,306
December 1987	1,257	1,291

* The numbers shown above are for full-time equivalent drivers and include both full-time and part-time drivers. One full-time driver is equal to 2.7 part-time drivers.

In addition to reducing budgeted bus drivers, the district has reduced the number of its other staff positions from 817 in July 1987 to 781 in December 1987. Further, the district has been reducing the number of hours that its buses operate. Comparing the six-month period ending December 31, 1987, with the same period in 1986, the district has reduced the number of hours that its buses have operated by 36,185 hours. Table 4 shows a comparison of the number of hours operated for each month from July through December for 1986 and 1987.

TABLE 4
COMPARISON OF THE
NUMBER OF HOURS OPERATED
FOR THE MONTHS OF JULY THROUGH DECEMBER
FOR 1986 AND 1987

<u>Month</u>	<u>1986 Number of Hours Operated</u>	<u>1987 Number of Hours Operated</u>	<u>Decrease (Increase)</u>
July	179,864	182,986	(3,122)
August	176,115	172,775	3,340
September	181,261	174,229	7,032
October	195,172	182,564	12,608
November	173,724	166,564	7,160
December	<u>186,510</u>	<u>177,343</u>	<u>9,167</u>
Total	<u>1,092,646</u>	<u>1,056,461</u>	<u>36,185</u>

Despite the corrective actions the district has taken to reduce its expenses, the district will probably still have an operating deficit for fiscal year, 1987-88. While the district estimated an operating deficit as of February 3, 1988, it continues to revise the amount of its deficits based upon more current information. However, preliminary estimates range up to \$7.1 million. Even if the operating deficit for fiscal year 1987-88 is as high as \$7.1 million, the district estimates that it will have sufficient cash and investments to fund its operating deficit. The district prepared a statement estimating that if the operating deficit is \$7.1 million, it will have \$10.7 million in cash and investments as of June 30, 1987. However, if the district continues to incur large operating deficits in future years, the district will deplete its available working capital and may have to borrow money to continue operating.

Measure B May Alleviate the
District's Financial Problems

The district's financial problems should be partially offset by revenues from a new source. The district estimates that it will receive \$7.7 million annually for the next 15 years from Measure B. Measure B is County Ordinance Number 0-86-97 of the Board of Supervisors of Alameda County, which the county's voters passed in the November 1986 general election. Measure B authorizes the Alameda County Transportation Authority to impose a one-half of one percent retail transactions and use tax throughout the county for 15 years, and it is designated to improve, construct, maintain, and operate certain transportation projects in Alameda County. Over the next 15 years, the district will receive an estimated total of \$115 million in tax revenues from Measure B, which represents 11.617 percent of the total revenue that Measure B will generate.

Although some voters believe that Measure B is intended to expand or improve transportation services in Alameda County, the Legislative Counsel stated that the district may apply its portion of the tax revenues from Measure B toward its anticipated operating deficit, provided that the district spends the revenues in Alameda County, and it may also use that portion to maintain its existing level of service. In addition, the Legislative Counsel stated that the materials presented to the voters on Measure B indicated that funds allocated to the district will be used for operational expenses of the

district. Nowhere in the relevant materials presented to the voters is the proposed fund allocation to the district restricted to new or increased levels of service. Appendix E presents the Legislative Counsel's opinion on how the district may use Measure B funds.

As of January 1988, the district and the Alameda County Transportation Authority are negotiating an agreement on how the district may use its Measure B funds. The county will not release the funds until an agreement with the district is signed.

Interim General Manager Has
Proposed Corrective Action

On March 3, 1988, the interim general manager provided us with a revised operating budget for fiscal year 1987-88 that he presented to the board of directors on February 24, 1988, as part of a proposed financial recovery program. Because we received the revised budget after we had completed our fieldwork and submitted our draft report to the district, we were unable to verify the reasonableness of the figures.

The revised operating budget estimates a deficit of \$1.2 million for fiscal year 1987-88. In the revised operating budget, the interim general manager estimates that revenues and subsidies will be \$121 million. This represents an increase of \$3.5 million over the approved budget. Expenses will be \$122.2 million. This increase of approximately \$3.5 million in revenues and subsidies will include

\$3.3 million from Measure B. The interim general manager now estimates that, for fiscal year 1987-88, the district will receive an operating subsidy from Measure B totaling \$5.6 million rather than the \$2.3 million estimated in the original operating budget. For fiscal year 1988-89, the interim general manager intends to propose a balanced operating budget.

As of March 3, 1988, the interim general manager stated that the board of directors had not formally adopted the revised operating budget; therefore, the revised budget was a proposal rather than a formal district plan. He intended to ask the board of directors to approve the revised budget at its March 9, 1988 meeting.

CONCLUSION

The Alameda-Contra Costa Transit District has insufficient control over its financial operations. For fiscal years 1984-85, 1985-86, and 1986-87, the expenses of the district have exceeded its revenues and subsidies. As of February 3, 1988, the district anticipated another operating deficit of up to \$7.1 million for fiscal year 1987-88. As a result of these deficits, the district's cash and investments have decreased significantly since June 1984. Weaknesses in the district's budgeting process have contributed to its financial difficulties. Specifically, the district has inaccurately estimated operating revenues and expenses, it has

produced unreliable budget variance reports, and it has not taken sufficient corrective actions to address its financial problems. To balance its budget, the district must increase its revenues and subsidies, reduce its expenses, or both. To assist in reducing the district's deficit, Measure B, a sales tax of one-half cent, will provide the district, over the next 15 years, approximately \$115 million that the district may legally use to offset its operating deficit.

RECOMMENDATIONS

To ensure that the fiscal problems at the Alameda-Contra Costa Transit District do not recur, the district should take the following actions:

- Develop well-documented and reliable estimates of revenues, subsidies, and expenses that reflect historical fluctuations for each month of the fiscal year;
- Using these estimates, develop a balanced or a surplus budget for fiscal year 1988-89;
- Maintain in the finance department all records that document the development of the budget so that the department can better control unbudgeted expenses;

- Develop and promptly submit to the board of directors accurate variance reports which identify the causes of significant budget variances;
- Take prompt corrective actions to remedy the causes of significant budget variance; and
- Promptly negotiate an agreement with the Alameda County Transportation Authority so that the district can receive its allocation of tax revenues from Measure B.

II

THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT HAS WEAK CONTROLS OVER EXPENSES FOR ITS BOARD OF DIRECTORS AND OFFICERS

The district has weak controls over the travel and entertainment expenses of its board of directors and officers. For \$41,668 of the \$91,957 in expenses that it paid for in calendar years 1986 and 1987, the district failed to comply with board policy or sound internal accounting controls and may have violated the Penal Code. Specifically, the district paid the expenses of directors and officers who did not sign their expense reports, paid the expenses of directors and officers who did not obtain the approval of the district's former general manager or the district's secretary, and paid expenses that were not supported with receipts. As a result of these weaknesses, the district cannot be certain that these payments were for official district business. In fact, the district's weak controls did result in improper payments of \$715 for the personal expenses of a director, \$3,368 in payments for directors' expenses that exceeded the amounts allowed per month, and the improper lending and payment of public funds. While our audit did not identify large dollar amounts of improper expenses, the frequency and variety of problems indicate that the district is vulnerable to much larger losses of funds because of its weak controls.

Section 24908 of the Public Utilities Code allows members of the district's board of directors to receive reimbursement for expenses incurred during the performance of their duties. Board Resolution 614, adopted on December 4, 1985, permits directors to travel anywhere in the United States and Canada. However, Board Resolution 424, adopted on March 12, 1975, requires that each director of the board and the district's general manager, attorney, and secretary follow certain procedures such as itemizing expenses and providing receipts for expenses. Further, this resolution also prohibits directors, excluding the president, from exceeding certain expense limits within the Alameda, Contra Costa, and San Francisco counties.

Travel and entertainment expense reports for directors are submitted to the district secretary and the controller for approval. The reports are then sent to the finance department for payment. The district uses a similar process for district officers except that the general manager approves the expense reports rather than the district secretary.

We reviewed 266 payments, totaling \$91,957, that the district made in calendar years 1986 and 1987 for the board of directors and the district officers. For 146 of these payments amounting to \$41,668, the district failed to comply with board policy or sound internal accounting controls and may have violated the Penal Code. Table 5 shows the total claim expenses over which the district had insufficient controls for each director and officer.

TABLE 5

**EXPENSES OVER WHICH THE DISTRICT
HAD INSUFFICIENT CONTROLS
FOR EACH DIRECTOR AND OFFICER
CALENDAR YEARS 1986 AND 1987**

	<u>Total Claim Expenses</u>	<u>Expenses With Insufficient Controls</u>	<u>Percent of Total Expenses With Insufficient Controls</u>
<u>Directors</u>			
Director, Ward I	\$ 4,948	\$ 612	12.4%
Director, Ward II	6,668	3,933	59.0
Director, Ward III*	3,812	2,320	60.9
Director, Ward IV*	4,996	2,450	49.0
Director, Ward V*	21,403	12,100	56.5
Director At-Large	4,436	2,768	62.4
Director At-Large*	<u>6,574</u>	<u>4,301</u>	65.4
Total	<u>52,837</u>	<u>28,484</u>	53.9
<u>Officers</u>			
Former General Manager	9,372	3,173	33.9
Secretary	29,698	10,011	33.7
Attorney	<u>50</u>		
Total	<u>39,120</u>	<u>13,184</u>	33.7
Total for Directors and Officers	<u>\$91,957</u>	<u>\$41,668</u>	45.3%

* The position of director for Ward III was occupied by two people during the period that we reviewed. The director of Ward IV served as president of the board from January 1, 1986, to January 7, 1986. The director of Ward V served as president of the board from January 8, 1986, to December 31, 1986. The second director at-large served as president of the board from January 1, 1987, to December 31, 1987.

As shown in Table 5, the district frequently used weak controls in paying the expenses of seven of eight directors, the former general manager, and the district secretary.

Claimants Did Not Sign
Expense Reports

Sound internal accounting controls require a claimant to sign his or her own travel-expense report to verify the accuracy and business-related nature of the expenses. The signature makes the claimant more responsible for the authenticity of the report, especially if the claimant must make an attestation to that effect. The State of California requires its employees to sign such attestations on all travel-expense reports. The district uses an expense-report form that has signature blocks for the claimant, the officer approving the payment, and the controller. However, before January 13, 1988, no district resolution required the signature of the claimant.

Of the 266 district payments that we reviewed, the district made 80 payments amounting to \$22,305 even though the corresponding expense reports were not signed by the claimants. For seven of the eight directors, the administrative assistant to the district secretary stated that she used receipts and other documents provided by directors to fill out the expense reports by herself. She did not ask for the signature of the directors after completing the forms. Moreover, the district secretary approved most of the expense reports without

requiring the directors' signatures. The controller also approved the unsigned expense reports and allowed the payment of the claims. The district's former general manager, attorney, and secretary usually signed their expense reports in the box provided on the form.

Expense Reports Were Not Approved

Board Resolution 424, Section 6(a), requires that claims for reimbursement be approved by the district secretary for directors and by the general manager for district officers. The district's expense-report form contains the signature block for such approvals. However, the district made 21 payments amounting to \$12,305 even though the corresponding expense reports were not signed by the responsible officer. The district secretary did not sign approval for \$2,016 in payments, and the former general manager did not sign approval for \$9,577 in payments. Nevertheless, the controller approved the payments, and the finance department paid the individuals. Further, we found 3 payments amounting to \$712 that were not approved by anybody.

Lack of the signature approval required by Section 6(a) can result in significant expenses outside the control of the general manager and the district secretary. For example, the district paid \$2,469 for the expenses of the district secretary who traveled to a conference in Washington, D.C. On another occasion, the district paid \$842 for the expenses of a director who traveled to a conference in

Vancouver, Canada. Neither of the expense-report forms had been approved by the responsible officer.

Also, good internal controls require that separation of duties exist between the claimant and the official approving the claimant's expense report. However, the former general manager approved 15 of his own expense reports, which amounted to \$2,254 in payments. Current district policy does not specifically prohibit district officials from approving their own expense reports.

Claims for Expenses
Not Supported With Receipts

Board Resolution 424, Section 6(b), requires that claimants attach receipts for transportation fares, lodging, and those incidental expenses that can be supported by receipts. If claimants do not have receipts, they should attach explanations of their expenses and the reasons why they do not have receipts. However, 13 payments amounting to \$875 were not supported by receipts or written explanations of the expense. For example, on April 15, 1987, the district paid \$151 to the district secretary for what appear to be taxi fares incurred during a conference in Phoenix, Arizona. The secretary did not submit a receipt or a written explanation identifying the expense.

The Effects of the District's
Weak Controls Over Expenses

Because it failed to use proper controls, the district cannot be certain that all expense payments were for official district business. In fact, the district's weak controls did result in the following erroneous expenses.

The District Paid for the
Personal Expenses of a Director

We identified instances in which the district erroneously paid for the personal expenses of a director. On one occasion, the district paid \$322 for the credit card expenses of the director. However, the district later discovered that the payments were for items the director had charged at various clothing stores.¹ On another occasion, the district paid \$393 for the credit card expenses of the same director and later discovered that the expenses were for personal expenses such as hair salon services. The district has recovered the amounts in question.

¹In its report on the district, the Alameda County Grand Jury noted questionable business and travel expenses, including personal expenses, and has referred the matter to the Alameda County District Attorney. The credit card is in the name of both the director and the district.

Payments for Expenses That
Exceeded the Amounts Allowed

Board Resolution 424, Section 3(a), limits each director, other than the president of the board, to \$50 per month for expenses incurred while conducting district business in the counties of Alameda, Contra Costa, and San Francisco. If directors do not wish to itemize expenses, they can claim a flat rate of \$8.00 per meeting of the full board and committees of the board. While no restrictions exist on the amount of expenses the president of the board can itemize, Section 4(b) allows the president to claim a flat allowance of \$200 per month instead of itemizing expenses.

Even though directors and the president of the board often exceeded the limits set by Sections 3(a) and 4(b), the district still paid them. Six directors received district payments that exceeded the \$50 maximum. These overpayments amounted to a total of \$2,185 for 1986 and 1987. For example, one director exceeded the \$50 limit by \$1,092 in September 1987. The director's expenses included \$833 for a hotel room in San Francisco, \$225 for meals from room service, and \$52 for local and long distance phone calls. Another director exceeded the \$50 limit by \$185 in June 1987. The director's expenses included \$65 for membership in a local club in San Francisco and \$50 for a special dinner held in San Francisco.

Three people served as president of the board during 1986 and 1987. The district overpaid two of the three presidents \$1,183 because the district paid both the itemized amount and the \$200 monthly allowance. The president who served during January 1986 received an overpayment of \$85. The president who served from January 1986 through December 1986 received overpayments of \$1,098 for 8 of the 12 months that she acted as president. The district did not overpay the president who served from January 1987 through the end of 1987.

Further, we identified payments that the district made to the former general manager and the district secretary that were reimbursements for expenses actually incurred for the benefit of directors while in Alameda, Contra Costa, and San Francisco counties. However, because most of the expense reports itemized other persons as well as directors as having been guests at meals or otherwise benefiting from the expenses, we could not quantify the amount spent on the directors. The district secretary did state that approximately two-thirds of his expenses were actually incurred on behalf of the directors. When the officers include directors' expenses on their expense-report forms, the district effectively circumvents the limitations imposed on directors by Section 3(a). For example, some payments were reimbursed on behalf of directors who had already exceeded their \$50 allowances for the month. In one instance, the former general manager paid and was reimbursed for a \$39.31 lunch with a director who had already exceeded the \$50 allowance by \$46. In addition, some of the payments made to the former general manager and

district secretary were substantial. For example, the district secretary paid and was reimbursed for \$321 for eight meals and wine at a private club in Oakland on behalf of a director.

Improper Payments by the District

Although the district was eventually reimbursed, the district initially paid a total of \$2,888 for airline tickets and meals for spouses and children accompanying four directors on business-related trips. After these trips, the district normally obtained reimbursement from the claimants by deducting the cost of the relatives' tickets and meals from the total amount claimed on the travel-expense reports. For the period between the purchase of the tickets and the reimbursement to the district, the district was, in effect, lending money to the directors' dependents. For example, on August 21, 1986, the district purchased an airline ticket for \$358 for one director's spouse. The director's trip was from October 4, 1986, to October 10, 1986. On October 24, 1986, 64 days after the district purchased the ticket, the district processed the director's expense report and deducted the spouse's ticket payment from the total amount that the director claimed. The district, thus, lent money for the purchase to the director for the 64-day period. The Penal Code, Section 424, makes it unlawful for a district officer charged with the disbursements of public monies to loan public monies for a purpose not authorized by law. Further, the district could not provide us with any legal authority that permitted the district to purchase airline tickets for

directors' spouses and children and then receive reimbursement from the directors. These purchases were, therefore, possible violations of the Penal Code, Section 424.

Further, although the total amount paid was small, the district paid public funds to political organizations and paid the costs of directors to attend political functions. Some payments were for luncheons for political officeholders and cost as little as \$10. One payment to a political organization was for as much as \$110. The Penal Code, Section 72.5, makes it unlawful for a person to present a claim for payment of public funds for reimbursement of costs incurred while attending a political function to support or oppose any political party or political candidate. Further, the Penal Code, Section 424, makes it unlawful for a district officer charged with the disbursement of public monies to appropriate public monies for the use of another person without the authority of the law. The district could not provide us with any legal authority that authorized these payments. These payments were, therefore, possible violations of the Penal Code.

District Explanation in
Response to Our Findings

Two directors and the district secretary stated that the district bought the airline tickets as a matter of convenience. Further, three directors stated that they always repaid the district through the reduction of the total amount listed on their expense reports.

The controller stated that the directors did not routinely sign their expense reports, but he required the district secretary to approve the expense reports of the directors. Further, he was unaware that Board Resolution 424 required the general manager to approve the expense reports of the district secretary. Finally, the controller stated that he was unaware of the spending limits for the directors and the president of the board for district-related expenses incurred in Alameda, Contra Costa, and San Francisco counties.

Corrective Action

On January 13, 1988, the board of directors adopted Board Resolution 648. This resolution contains specific language requiring directors to prepare and sign their own expense reports. It also provides detailed requirements in other areas governing district travel and personal Expenses. In addition, the resolution prohibits the acquiring of hotel rooms in the local area and the issuing of bank, telephone, or gasoline credit cards to any director, officer, or other district employee.

CONCLUSION

The Alameda-Contra Costa Transit District has weak controls over the travel and entertainment expenses of its board of directors and officers. For \$41,668 of the \$91,957 in expenses that it paid for in calendar years 1986 and 1987, the

district failed to comply with board policy or sound internal accounting controls and may have violated the Penal Code. As a result of these weaknesses, the district cannot be certain that these payments were for official district business. In fact, the district's weak controls did result in erroneous payments of \$715 for the personal expenses of a director, \$3,368 in payments for directors' expenses that exceeded the amounts allowed per month, and the improper lending and payment of public funds. While our audit did not identify large dollar amounts of improper expenses, the frequency and variety of problems indicate that the district is vulnerable to much larger losses of funds because of its weak controls.

RECOMMENDATIONS

To ensure that only appropriate travel and entertainment expenses are paid, the Alameda-Contra Costa Transit District should take the following actions:

- Require all members of the board of directors, district officers, and other district employees to read and abide by district policies regarding travel and entertainment expenses;

- Direct all personnel involved in the review, approval, and payment of travel and entertainment expenses to reject for payment any expense report that does not meet the requirements of state law, board policy, and sound internal controls;
- Modify its expense report to include an attestation statement by the claimant similar to that used by the State of California on its expense reports, and require the claimants to sign the reports;
- Adopt a policy for district officers that defines the limits on district-related expenses incurred in Alameda, Contra Costa, and San Francisco counties;
- Adopt policies that prohibit district officers from approving their own expense reports; prohibit the purchase of airline tickets or other items for anyone other than directors, officers, and employees; and prohibit the payment of public funds to political functions or political organizations; and
- Recover all overpayments made to directors.

III

ATTORNEYS AT THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT USED DISTRICT RESOURCES TO CONDUCT THEIR PRIVATE LAW PRACTICES

Although not authorized by the district's board of directors, five of the six full-time, salaried attorneys employed by the district during calendar years 1985 through 1987 used district resources, including staff, equipment, and facilities, to conduct their private law practices. For example, the Alameda County Superior Court paid three of the district's attorneys over \$3,400 for non-district arbitrations. Although the attorneys conducted some of these arbitration hearings in district offices during business hours, the district received no compensation for any of the arbitrations. In addition, the district paid over \$1,200 for listings in the Oakland telephone books of five of the district's attorneys and for a combined listing of three of the district's attorneys. However, because the district did not maintain sufficient timekeeping and other records, we could not determine the amount of district time the attorneys used for their private law practices or the value of the district resources that they used.

District's Attorneys Have
Private Law Practices

To determine whether the district's attorneys conducted private law practices while employed by the district, we examined the attorneys' conflict-of-interest statements for 1985 and 1986, which disclose personal financial information, including income and investments, and which the district requires its attorneys to file annually. Four of the six attorneys employed by the district during calendar years 1985 through 1987 stated in their conflict-of-interest statements that they had private law practices for calendar years 1985 and 1986. Further, three of these four attorneys stated that they had received income from private law practices. The fourth attorney reported no income but did report an investment in a law practice. This attorney reported that the law practice was worth between \$10,001 and \$100,000 on his leaving office statement.

Three attorneys stated that, for many years, the district has permitted private law practices as long as the law practices did not interfere with district business. Also, two attorneys stated that several former general managers knew that the attorneys used district resources for private law practices. Furthermore, four attorneys stated that, when the district hired them, the district officials informed them that private law practices were allowable. Finally, three attorneys stated that, because they have worked more than the

required hours each week for the district, the time they spent in private practice was offset by the extra hours that they worked for the district.

Further, to determine whether the district's attorneys used district resources to conduct their private law practices, we asked the six attorneys employed by the district during calendar years 1985 through 1987 to respond in writing to questions regarding their outside employment, including private law practices. Four of these attorneys responded to our requests for information. These four attorneys are the acting attorney for the district, the former attorney for the district, a trial attorney, and a former trial attorney. However, the former chief labor attorney and a former trial attorney declined to respond in writing.

The four responding attorneys stated that they earned compensation from private law practices while using district resources. Three of these attorneys stated that they earned approximately \$27,540 from their private law practices during the three-year period ended December 1987. The four responding attorneys also stated that they used district resources, including district staff, office equipment, telephones, office space, and office supplies. However, although three of these attorneys stated that the value of district resources that they had used was minimal, they did not know the exact value of these resources.

District's Attorneys Provide Arbitration Services
and Are Listed in the Telephone Book

The Alameda County Superior Court paid three of the six attorneys employed by the district during calendar years 1985 through 1987 over \$3,400 for arbitration services on 23 occasions. The three attorneys are the acting attorney for the district, the former chief labor attorney, and the former attorney for the district.

Although the district did not receive any compensation for the use of its facilities, the attorneys conducted some of these arbitration hearings at the district's offices during business hours. For example, the former chief labor attorney held at least two hearings in the district office and received \$150 for each hearing. Moreover, all three attorneys told the Alameda County Superior Court that they could hold arbitration hearings in their district offices. The acting attorney for the district stated that conducting arbitration hearings provides good experience and training for attorneys of the district. He also stated that having the district's attorneys conduct hearings is good public relations with the courts for the district.

In addition, the district paid over \$1,200 from 1985 through 1987 for listings of the district's attorneys in the yellow and white pages of the Oakland telephone books. Five of the six attorneys were listed as private attorneys with a district telephone number and address. Further, a combined listing for three of the attorneys was also listed with a district telephone number and address in the

telephone books. The acting attorney for the district stated that these listings were justified because the district's attorneys use their own names on the pleadings instead of using the district's name. The attorney believed that listing the attorneys' names was a convenient method for other attorneys to find the telephone numbers of the district's attorneys. Further, according to the acting attorney for the district, the district's attorneys believed that it was more prestigious with the courts to use the attorneys' names rather than the district's name because some judges and attorneys have a lower opinion of publicly employed attorneys. Finally, the acting attorney for the district stated that the attorneys did not intend to use these listings as advertisement for private law practice, and no private practice was obtained as a result of the listings.

The Propriety of Using District Resources for Private Law Practices

To determine the propriety of the attorneys' use of district resources to conduct their private law practices, we requested a legal opinion from the Legislative Counsel. The Legislative Counsel found no authority for the district to permit attorneys on its legal staff who are employed full time and who receive the salary established for the position either to engage in private law practice during the time that they are employed by the district or to use district offices, equipment, and supplies for that purpose. However, the Legislative Counsel also stated that the attorney for the district could conceivably have a contract with the district that allows private

practice and the use of district resources, but we found that the district does not have such a contract with the attorney for the district. Further, the Legislative Counsel stated that, depending upon all of the facts and circumstances, if the district's appointed attorney and the attorneys of the district use the district's offices, equipment, and supplies to conduct private law practices for their own private gain and if they conducted private law practices while the district pays them a salary, these activities may be unlawful. They may also constitute grounds for removal from office and may subject the directors of the district who may have sanctioned those activities to personal liability for improper expenditures of public funds. Appendix E presents the Legislative Counsel's opinion on private law practices by the district's attorneys.

According to the district secretary, the minutes of the board of directors contain no authorization that permits attorneys to conduct private law practices. Further, the district has no written contracts with any of the attorneys that permits the use of district resources for private law practices. Finally, the attorneys' personnel files contain no evidence that the district authorized the attorneys to use district resources for private law practices. We contacted the district's former general manager and requested a statement regarding his knowledge of the attorneys' use of district resources for their private law practices. He stated that it would be inappropriate for him to make any statements regarding the district's legal staff. In addition, the district secretary stated that he has no first-hand

knowledge of the private law practices of the legal staff. We also found that the district had no formal policy regarding the outside employment of its employees, including its legal staff.

Corrective Action

The district has adopted a policy which states that, as of May 1, 1988, the district's attorneys may not have private law practices, and their fees for non-district arbitrations will be turned over to the district. In addition, the acting attorney stated that the next telephone book will not list the attorneys' names in the yellow and the white pages.

CONCLUSION

Five of the district's six attorneys used district resources, including staff, equipment, and facilities, to conduct their private law practices in calendar years 1985, 1986, and 1987. However, because the district did not maintain sufficient records, we could not determine the exact value of the district resources used.

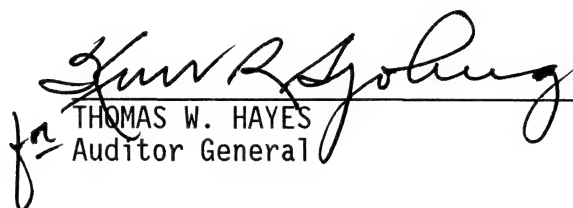
RECOMMENDATIONS

To ensure that its legal staff does not use district resources to conduct their private law practices, the district should take the following actions:

- Develop and implement a policy on outside employment that prohibits all of the district's employees from using district resources for nondistrict-related business; and
- Inform employees of the district's policy on outside employment.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: March 7, 1988

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APPENDIX A

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
COMPARISON OF ACTUAL REVENUES, SUBSIDIES,
AND EXPENSES WITH BUDGET AMOUNTS
FOR THE TWELVE MONTHS ENDED JUNE 30, 1985
(UNAUDITED)

	<u>Budget</u>	<u>Actual</u>	<u>Under (Over) Budget</u>
<u>Revenues</u>			
Farebox	\$ 32,818,000	\$ 30,691,319	\$ 2,126,681
Other Fares	54,000	68,111	(14,111)
BARTD Transfers	1,055,000	1,723,337	(668,337)
Charter	0	71,496	(71,496)
Contract	7,182,000	8,612,609	(1,430,609)
Advertising	497,000	437,500	59,500
Interest Income	235,000	679,000	(444,000)
Other	<u>200,000</u>	<u>168,273</u>	<u>31,727</u>
Operating Revenues	<u>42,041,000</u>	<u>42,451,645</u>	<u>(410,645)</u>
<u>Subsidies</u>			
Property Taxes	14,807,000	14,626,487	180,513
State Transit Assistance	3,077,548	3,093,048	(15,500)
BART Transaction Use Tax	10,445,000	10,516,481	(71,481)
Transportation Development Act Sales Tax	20,099,067	20,059,249	39,818
Federal Operating Assistance Section 9	7,639,444	7,852,000	(212,556)
Federal Operating Assistance Section 8	100,000	239,750	(139,750)
Other	<u>0</u>	<u>16,659</u>	<u>(16,659)</u>
Total Subsidies	<u>56,168,059</u>	<u>56,403,674</u>	<u>(235,615)</u>
Revenues & Subsidies	<u>98,209,059</u>	<u>98,855,319</u>	<u>(646,260)</u>
<u>Expenses</u>			
Operator Wages	35,136,000	33,884,596	1,251,404
Other Wages	17,541,000	18,678,367	(1,137,367)
Fringe Benefits	27,450,000	26,361,995	1,088,005
Services	4,044,000	4,927,134	(883,134)
Fuel and Oil	6,193,000	6,171,921	21,079
Other Material	6,024,000	6,704,061	(680,061)
Insurance	3,054,000	1,682,690	1,371,310
Leases and Rentals	425,000	546,410	(121,410)
Other Expenses	1,681,000	4,497,874	(2,816,874)
Interest Expenses	<u>87,000</u>	<u>77,739</u>	<u>9,261</u>
Expenses	<u>101,635,000</u>	<u>103,532,787</u>	<u>(1,897,787)</u>
Operating Surplus (Deficit)	<u>\$ (3,425,941)</u>	<u>\$ (4,677,468)</u>	<u>\$ (1,251,527)</u>

Source: Financial statement of the Alameda-Contra Costa Transit District for the twelve months ended June 30, 1985.

APPENDIX B

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
COMPARISON OF ACTUAL REVENUES, SUBSIDIES,
AND EXPENSES WITH BUDGET AMOUNTS
FOR THE TWELVE MONTHS ENDED JUNE 30, 1986
(UNAUDITED)

	<u>Budget</u>	<u>Actual</u>	<u>Under (Over) Budget</u>
<u>Revenues</u>			
Farebox	\$ 32,052,999	\$ 30,537,279	\$ 1,515,720
Other Fares	93,000	80,700	12,300
BARTD Transfers	1,831,998	1,823,349	8,649
Charter	63,999	20,060	43,939
Contract	10,384,998	10,471,053	(86,055)
Advertising	456,999	457,885	(886)
Interest Income	510,000	510,000	0
Other	<u>174,000</u>	<u>236,233</u>	<u>(62,233)</u>
Operating Revenues	<u>45,567,993</u>	<u>44,136,559</u>	<u>1,431,434</u>
<u>Subsidies</u>			
Property Taxes	14,815,998	16,361,500	(1,545,502)
State Transit Assistance	1,739,013	1,739,019	(6)
BART Transaction Use			
Tax	10,800,000	10,800,000	0
Transportation			
Development Act			
Sales Tax	27,759,000	27,919,950	(160,950)
Federal Operating			
Assistance Section 9	7,077,999	7,956,734	(878,735)
Federal Operating			
Assistance Section 8	79,998	287,160	(207,162)
Other	<u>520,998</u>	<u>527,359</u>	<u>(6,361)</u>
Total Subsidies	<u>62,793,006</u>	<u>65,591,722</u>	<u>(2,798,716)</u>
Revenues & Subsidies	<u>108,360,999</u>	<u>109,728,281</u>	<u>(1,367,282)</u>
<u>Expenses</u>			
Operator Wages	33,956,211	34,319,410	(363,199)
Other Wages	20,832,081	20,968,361	(136,280)
Fringe Benefits	27,653,868	29,235,266	(1,581,398)
Services	3,532,059	4,578,337	(1,046,278)
Fuel and Oil	6,436,209	5,120,612	1,315,597
Other Material	5,821,155	8,840,863	(3,019,708)
Insurance	2,207,370	4,771,153	(2,563,783)
Leases and Rentals	1,129,920	326,321	803,599
Other Expenses	6,488,190	2,949,647	3,538,543
Interest Expenses	<u>79,998</u>	<u>3,056</u>	<u>76,942</u>
Expenses	<u>108,137,061</u>	<u>111,113,026</u>	<u>(2,975,965)</u>
Operating Surplus (Deficit)	<u>\$ 223,938</u>	<u>\$ (1,384,745)</u>	<u>\$ (1,608,683)</u>

Source: Financial statement of the Alameda-Contra Costa Transit District for the twelve months ended June 30, 1986.

APPENDIX C

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
COMPARISON OF ACTUAL REVENUES, SUBSIDIES,
AND EXPENSES WITH BUDGET AMOUNTS
FOR THE TWELVE MONTHS ENDED JUNE 30, 1987
(UNAUDITED)

	<u>Budget</u>	<u>Actual</u>	<u>Under (Over) Budget</u>
<u>Revenues</u>			
Farebox	\$ 32,570,000	\$ 32,216,066	\$ 353,934
Other Fares	0	123,262	(123,262)
BARTD Transfers	5,935,000	5,923,919	11,081
Charter	68,000	14,054	53,946
Contract	6,980,000	7,303,171	(323,171)
Advertising	480,000	509,333	(29,333)
Interest Income	240,000	240,000	0
Other	<u>479,000</u>	<u>43,076</u>	<u>435,924</u>
Operating Revenues	<u>46,752,000</u>	<u>46,372,881</u>	<u>379,119</u>
<u>Subsidies</u>			
Property Taxes	16,685,000	18,167,219	(1,482,219)
BART Transaction Use Tax	16,400,000	16,400,000	0
Transportation Development Act Sales Tax	24,490,000	24,386,402	103,598
Federal Operating Assistance Section 9	6,801,000	7,500,752	(699,752)
Federal Operating Assistance Section 8	68,000	68,004	(4)
Other	<u>0</u>	<u>580,525</u>	<u>(580,525)</u>
Total Subsidies	<u>64,444,000</u>	<u>67,102,902</u>	<u>(2,658,902)</u>
Revenues & Subsidies	<u>111,196,000</u>	<u>113,475,783</u>	<u>(2,279,783)</u>
<u>Expenses</u>			
Operator Wages	34,409,000	36,657,328	(2,248,328)
Other Wages	21,384,000	22,448,262	(1,064,262)
Fringe Benefits	29,581,000	33,672,100	(4,091,100)
Services	5,290,000	5,398,967	(108,967)
Fuel and Oil	3,688,000	3,744,203	(56,203)
Other Material	9,336,000	8,717,324	618,676
Insurance	4,479,000	4,192,442	286,558
Leases and Rentals	1,219,000	958,675	260,325
Other Expenses	3,848,000	3,239,018	608,982
Interest Expenses	<u>0</u>	<u>73,144</u>	<u>(73,144)</u>
Expenses	<u>113,234,000</u>	<u>119,101,463</u>	<u>(5,867,463)</u>
Operating Surplus (Deficit)	<u>\$ (2,038,000)</u>	<u>\$ (5,625,680)</u>	<u>\$ (3,587,680)</u>

Source: Financial statement of the Alameda-Contra Costa Transit District for the twelve months ended June 30, 1987.

APPENDIX D

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
COMPARISON OF PROJECTED REVENUES, SUBSIDIES,
AND EXPENSES WITH BUDGET AMOUNTS
FOR THE TWELVE MONTHS ENDED JUNE 30, 1988*
(UNAUDITED)

	<u>Budget</u>	<u>Actual</u>	<u>Under (Over) Budget</u>
<u>Revenues</u>			
Farebox	\$ 32,266,000	\$ 30,039,780	\$ 2,226,220
Other Fares	0	93,326	(93,326)
BARTD Transfers	5,923,000	5,933,576	(10,576)
Charter	0	9,587	(9,587)
Contract	7,654,000	7,658,734	(4,734)
Advertising	470,000	555,002	(85,002)
Interest Income	1,000,000	915,569	84,431
Other	0	48,470	(48,470)
Operating Revenues	<u>47,313,000</u>	<u>45,254,044</u>	<u>2,058,956</u>
<u>Subsidies</u>			
Property Taxes	19,109,000	19,423,537	(314,537)
State Transit Assistance	678,000	413,719	264,281
BART Transaction Use Tax	15,238,000	15,238,000	0
Transportation Development Act Sales Tax	25,282,000	25,282,000	0
Federal Operating Assistance	7,585,000	6,868,775	716,225
Other (Measure B)	<u>2,269,000</u>	<u>2,269,000</u>	<u>0</u>
Total Subsidies	<u>70,161,000</u>	<u>69,495,031</u>	<u>665,969</u>
Revenues & Subsidies	<u>117,474,000</u>	<u>114,749,075</u>	<u>2,724,925</u>
<u>Expenses</u>			
Operator Wages	34,698,000	36,743,112	(2,045,112)
Other Wages	24,269,000	22,870,381	1,398,619
Fringe Benefits	30,671,000	32,951,343	(2,280,343)
Services	5,214,000	5,599,097	(385,097)
Fuel and Oil	3,645,000	4,565,256	(920,256)
Other Material	9,016,000	9,125,138	(109,138)
Insurance	4,897,000	4,880,479	16,521
Leases and Rentals	1,464,000	1,808,457	(344,457)
Other Expenses	<u>3,600,000</u>	<u>3,292,830</u>	<u>307,170</u>
Expenses	<u>117,474,000</u>	<u>121,836,093</u>	<u>(4,362,093)</u>
Operating Surplus (Deficit)	<u>\$ 0</u>	<u>\$ (7,087,018)</u>	<u>\$(7,087,018)</u>

*Revised Operating Budget as of February 3, 1988.

Source: The Revised Operating Estimate of the Alameda-Contra Costa Transit District.

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Sacramento, California
January 22, 1988

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Mr. Thomas W. Hayes
Auditor General
660 J Street, Suite 300
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Alameda - Contra Costa Transit District
(Audit Report P-767) - #26772

Dear Mr. Hayes:

BACKGROUND TO QUESTION NO. 1

Pursuant to Division 12.5 (commencing with Section 131000) of the Public Utilities Code,¹ enacted by Chapter 301 of the Statutes of 1986, the Board of Supervisors of Alameda County adopted County Ordinance No. 0-86-97. The ordinance was submitted to the voters of the county as Measure B at the November 4, 1986, general election and received the required majority approval.

Among other things, the ordinance created the Alameda County Transportation Authority (hereafter the authority) and authorized the authority to impose a one-half of 1 percent retail transactions and use tax throughout the county for a period of 15 years. It is anticipated that the tax will raise approximately \$56 million a year beginning in 1987 and that, with an estimated 2.3 percent annual growth rate, the revenues generated over the 15-year period will be \$990 million (Alameda County Transportation Expenditure Plan - Executive Summary,

¹ Unless otherwise indicated, all section references are to the Public Utilities Code.

p. 2). The adopted county transportation expenditure plan designates \$115 million for allocation to the Alameda-Contra Costa Transit District (hereafter the district) over the 15-year period.

QUESTION NO. 1

May proceeds of the retail transactions and use tax which are designated for allocation to the district be applied toward the district's anticipated operating deficit so as to enable the district to maintain its existing level of service?

OPINION NO. 1

Proceeds of the retail transactions and use tax which are designated for allocation to the district may be applied toward the district's anticipated operating deficit so as to enable the district to maintain its existing level of service.

ANALYSIS NO. 1

Division 12.5 (commencing with Section 131000), pursuant to which the tax ordinance was enacted, prescribes comprehensive procedures for developing a plan for expenditure of the tax revenues (see Ch. 2 (commencing with Sec. 131050), Div. 12.5). In accordance with those procedures, the Alameda Countywide Transportation Committee was formed to consider proposals for the expenditure of the tax revenues and to incorporate its recommendations into a county transportation expenditure plan (Sec. 131050). Ultimately, the Alameda County Board of Supervisors and other affected local governmental entities adopted the Alameda County Transportation Expenditure Plan (hereafter the plan; see Sec. 131055).

Division 12.5 makes it clear that the adopted county transportation expenditure plan is the principal standard for the allocation and expenditure of revenues derived from the transactions and use tax (see Secs. 131001, 131101, 131106, 131301, 131302, and 131303). Statutory criteria for selecting projects to be included in the plan contemplate funding for, among other things, a sponsoring agency's operational expenditures. The following provisions are representative of that authorization:

"131050. Any board of supervisors ... may establish ... a process to develop a countywide consensus on the need for these projects and on a proposed county transportation expenditures plan to adequately fund the construction, maintenance, repair, or operation of these projects. . . ."

"131051. The county transportation expenditure plan shall consist of the following:

"(a)(1) A list of essential traffic and transportation projects in the order of priority within the county, and their respective sponsoring agencies, The types of projects may include, but are not limited to, capital, maintenance, repair, or operation projects. . . .

* * * (Emphasis added.)

"131107.

* * *

"... [The tax revenue funds] shall be used for the planning, design, construction, and operation of the traffic and transportation projects as set forth in the adopted [county transportation expenditure] plan, and shall be allocated according to eligible sponsoring agencies." (Emphasis added.)

As a limitation on the use of the tax proceeds, the Legislature has expressed its intention that revenues from the tax be used "to supplement existing local revenues being used for public transportation purposes listed in the plan" and that those funds not be used to "replace funds previously provided by property tax revenues for public transportation purposes" (Sec. 131100). Furthermore, any project estimated to have adequate funding shall not be included in the list of projects in the county transportation expenditure plan (para. (1), subd. (a), Sec. 131051). Since the operations of the district extend beyond Alameda County, it is subject to the further limitation that the tax revenues be expended only in the county (subd. (b), Sec. 131100).

On the basis of statutorily prescribed criteria for the inclusion of projects in the county transportation expenditure plan, authority exists for allocating a portion of the proceeds of the transactions and use tax to the district for the purpose of funding its operational expenses, to the extent that adequate funding for those expenses is not otherwise available.

It is next necessary to consider what, if any, limitations were placed on that authority by the transactions and use tax ordinance approved by the voters.

It is a general rule that a court will interpret a measure adopted by a vote of the people in such a manner as to give effect to the intent of the electorate (Creighton v. City of Santa Monica, 160 Cal. App. 3d 1011, 1018). The adoption of

Measure B by the voters of Alameda County is analogous to a contract between the voters and the authority. The terms of the specific proposal submitted to the voters must be respected (see Tooker v. San Francisco Bay Area Rapid Transit Dist., 22 Cal. App. 3d 643, 649). Any limitations contained in Measure B restrict the power of a public entity to expend the proceeds of the transactions and use tax (see Mills v. S.F. Bay Area Rapid Transit Dist., 261 Cal. App. 2d 666, 668).

To ascertain the intent of the electorate, it is proper to consider official statements made to the voters in connection with the proposition they are requested to approve (Creighton v. City of Santa Monica, supra, p. 1018). Ballot arguments and analyses presented to the electorate may be considered in determining the probable meaning of a measure submitted to the electorate (County of Placer v. Corin, 113 Cal. App. 3d 443, 452, fn. 6).

The transactions and use tax ordinance is required to specify the purposes for which the revenues from the tax will be used (Sec. 131103). The voter information handbook is required to include the entire adopted county transportation expenditure plan (subd. (h), Sec. 131108). Accordingly, in connection with the election on Measure B, the electors were presented with the full text of the proposed tax ordinance as well as the plan.

Sections 3 and 15 of the ordinance provide, respectively, as follows:

"Section 3. Purpose.

". . . . [T]his ordinance should be interpreted to achieve the purposes set forth herein:

* * *

"(e) to improve, construct, maintain, and operate certain transportation projects and facilities contained in the Transportation Expenditure Plan adopted by the Board of Supervisors of Alameda County, which plan is incorporated here by this reference as though fully set forth herein, and as that Plan may be amended from time to time pursuant to applicable law." (Emphasis added.)

"Section 15. Use of Proceeds.

"The proceeds of all taxes imposed by this ordinance shall be used solely for the projects

and purposes set forth in the County Transportation Expenditure Plan and for the administration thereof."

An analysis of Measure B by the Alameda County Counsel was also before the voters and stated that:

"The proceeds of this tax are required by the ordinance to be used only for the projects and purposes set forth in the Alameda County Transportation Expenditure Plan and for the administration of the plan."

The adopted plan lists and describes a number of projects proposed for accomplishment with the proceeds of the tax and states that all of the listed projects carry a Number 1 priority within the plan. Among the projects listed and described is the following:

"Project: AC Transit [district]
Cost: \$115 million
Sponsor: AC Transit
Description: Annually, 11.617% of the total tax revenue generated will be allocated for operations and maintenance. This percentage will allow AC to realize both inflation and real economic growth. Any real growth beyond the 2.3% predicted will also be shared with AC to a cap of \$20 million.

This money will be subject to performance criteria established along the lines of the current MTC (Metropolitan Transportation Commission) requirements. (6) (13)." (Emphasis added.)

Footnotes (6) and (13) of the plan, both of which are applicable to the district project proposal, read as follows:

"(6) It is the goal of the Committee^[2] that this money assist AC Transit in the implementation of their Comprehensive Plan."³

"(13) The full percentage allocation of the total funds received from sales tax revenues will be distributed to each agency annually."

Included in the plan is a chart entitled "Individual Project Funding Shortfalls" which lists each proposed project, its estimated cost, and available funding from various sources, including revenues from the transactions and use tax (see subds. (b), (c), and (d), Sec. 131051). With respect to the district project, the chart indicates that "Cost" is not applicable. This would seem to indicate that funds designated for allocation to the district were not intended for capital expenditure; for, if proposed capital expenditures were intended to be funded, the cost thereof would presumably have been estimated and shown. This premise is consistent with the project description, which states that the tax revenues will be allocated to the district for operation and maintenance.

The ballot pamphlet presented to the voters in connection with the election on Measure B contained arguments for and against the tax ordinance. Those arguments contained the following relevant statements:

"Measure B also provides funding for the operation and expansion of AC Transit... ."
(Argument in Favor of Measure B; emphasis added.)

"And that's what Measure B proposes to do: take a 1/2 penny increase in the sales tax in our county and spend the money on a specific list of projects designed to relieve congestion on our freeways, to fund mass transit improvements, and to fix the eight year backlog of city street and

² The "Committee" is the Alameda Countywide Transportation Committee, an advisory committee formed "to develop a countywide consensus on the need for these projects and on a proposed county transportation expenditure plan to adequately fund the construction, maintenance, repair, or operation of these projects" (Sec. 131050, emphasis added).

³ We have not been provided with the district's comprehensive plan.

road repairs." (Rebuttal to Argument Against Measure B; emphasis added.)

The description of the project contained in the adopted plan states that the allocation will allow the district "to realize ... real economic growth." The ballot arguments supporting Measure B state that the tax will "provide funding for the operation and expansion of AC Transit" and will "fund mass transit improvements." While these generalized statements may broaden the purposes for which the allocated funds may be expended, so as to provide funding for growth, expansion, and improvements, they do not restrict the operational expenses which may be funded to only those additional expenses attributable to growth, expansion, or improvements.

The estimated \$115 million allocation to the district may, in fact, be an amount calculated to cover both the deficit and to provide additional funding for growth, expansion, or improvement, and the operational expenses associated therewith.⁴ Presumably, the boards of supervisors and the required majority of the cities, when they adopted the plan, were aware that, at its current level of service, the district operates at a deficit, and did not intend to ignore that deficit in allocating funds for the district's operations.

Material which was before the electors voting on the proposed tax ordinance is replete with statements that funds allocated to the district will be used for operational expenses of the district. The fact that revenues from the tax may be applied toward operational expenses which exceed the district's current and projected revenues, that is to make up for anticipated deficits so as to allow the district to maintain its current level of service, is, in our opinion, irrelevant. Nowhere in the plan, the tax ordinance, or other relevant material presented to the voters, is the proposed allocation of funds to the district limited to those operational expenses which are attributable to new or increased levels of service. In fact, any project estimated to have adequate available funding may not be included in the plan (para. (1), subd. (a), Sec. 131051).

We conclude, therefore, that proceeds of the retail transactions and use tax which are designated for allocation to

⁴ As indicated earlier, footnote (6) of the plan, expresses the goal that the money allocated to the district assist the district in the implementation of its comprehensive plan. That plan, while not furnished to us, may include cost estimates of proposed service expansions and improvements.

the district may be applied toward the district's anticipated operating deficit so as to enable the district to maintain its existing level of service.

BACKGROUND TO QUESTION NO. 2

The district's appointed legal counsel and other attorneys on the district legal staff conducted private law practices during working hours while employed by the district, using district resources, including office space and telephones, for their private practices. The district did not receive reimbursement from those attorneys for the district resources used. An attorney on the district legal staff has stated that operating private law practices out of district facilities has gone on for many years and that the district's board of directors was aware of these activities.

QUESTION NO. 1

May the district allow its appointed counsel, and members of the district legal staff, to conduct private law practices during the hours they are employed by the district and to use the district's offices, equipment, and supplies in conducting private law practices? If not, may reimbursement be required?

OPINION AND ANALYSIS NO. 2

The district board of directors (hereafter the board) may appoint an attorney to hold office at its pleasure (Sec. 24931). The attorney is to take charge of all suits and legal matters to which the district is a party or in which it is legally interested, give his or her opinion or advice when required by the board, act as legal advisor to the general manager and other district officers, prepare or approve legal documents connected with the business of the district, and perform such other and additional services as the board may require (Sec. 24938).

The board may adopt a personnel system, and is required to determine and create the number and character of positions necessary to carry out the functions of the district, and to establish an appropriate salary, salary range, or wage for those positions (Sec. 24886).

The expenditure of public funds is regulated solely by constitutional and statutory provisions, and must be confined to public purposes. An expenditure of the funds of a local public agency is permitted only where it appears that the welfare of the community and its inhabitants is involved and benefit results to the public (Albright v. City of South San Francisco, 44 Cal.

App. 3d 866, 869; see also Rathbun v. City of Salinas, 30 Cal. App. 3d 199, 203).

The Legislature has no power to grant, or to authorize a public body to grant, extra compensation or extra allowance to a public officer or employee after service has been rendered (Sec. 17, Art. IV, Cal. Const.). Similarly, Section 6 of Article XVI of the California Constitution prohibits the Legislature from making, or authorizing the making of, any gift or public money or thing of value to any individual.

The constitutional prohibition against gifts is not violated if a governmental expenditure is for a public purpose (People v. City of Long Beach, 51 Cal. 2d 875, 881-883; Simpson v. City of Los Angeles, 40 Cal. 2d 271, 282; County of L.A. v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 386-388; Veterans' Welfare Board v. Jordan, 189 Cal. 124, 141). In determining whether an expenditure of public funds is to be considered a gift, the primary question is whether the funds are to be used for a public or private purpose. If they are for a public purpose within the jurisdiction of the expending entity, they are not a gift within the meaning of Section 6 of Article XVI, even though, incidentally, private persons receive a benefit (County of Alameda v. Janssen, 16 Cal. 2d 276, 281; City of Oakland v. Garrison, 194 Cal. 298, 302; Veterans' Welfare Board v. Jordan, supra, p. 146).

A local public agency may prohibit an employee's outside employment, activity, or enterprise which involves the use, for private gain or advantage, of the local agency's time, facilities, equipment, or supplies (Sec. 1126, Gov. C.). We have not been advised as to whether or not the district has adopted such a policy restricting the outside activities of its employees.

In any event, it is well established that a public officer or employee may collect and retain only such compensation as is specifically provided by the applicable statute, ordinance, or (where authorized by law) resolution of the appropriate governing body (Longshore v. County of Ventura, 25 Cal. 3d 14, 22-23; Fugitt v. City of Placentia, 70 Cal. App. 3d 868, 871; Markman v. County of Los Angeles, 35 Cal. App. 3d 132, 135). The statutory compensation rights of public employees are strictly limited and cannot be altered or enlarged by conflicting agreements between the public agency and its employees (Longshore v. County of Ventura, supra, p. 23; Miller v. State of California, 18 Cal. 3d 808, 814). Money paid by a governmental agency to its officers or employees without authority of law may be recovered (County of San Diego v. Milotz, 46 Cal. 2d 761, 767; Geftakys v. State Personnel Board, 138 Cal. App. 3d 844, 861; Van Riessen v. City of Santa Monica, 63 Cal. App. 3d 193, 199-200).

The attorney who serves as the district's legal counsel, being an appointed officer who serves at the pleasure of the board, is not necessarily included in the wage and salary structure established by the board as part of the district's personnel system, but may serve pursuant to a negotiated contract which provides for a certain salary and prescribes other terms and conditions. It is conceivable that the negotiated terms and conditions of that contract permit the appointed attorney, as part of his or her compensation package, to engage in the private practice of law and to utilize district office space, equipment, and supplies for that purpose. In our opinion, it is within the authority of the board to enter into such a contract (see Sec. 25721).

Other attorneys, serving on the legal staff as employees of the district, are most likely included within the district's personnel system, and their compensation determined pursuant to the salary, salary range, or wage established by the board for those positions (Sec. 24886). In the absence of any information to the contrary, we assume that their employment is full time and that they receive the compensation established for those positions. If, in fact, the district has established a personnel system and has established a salary schedule for its attorneys, we find no authority for the district to permit attorneys on its legal staff who are employed full time and who receive the salary established for the position, to engage in private law practice during the time they are employed by the district and to use district offices, equipment, and supplies for that purpose.

Depending upon all of the facts and circumstances, the use of the district's offices, equipment, and supplies by the district's appointed counsel and attorneys of the district, for their own private gain, and their conducting of private law practices during time for which they are paid a salary by the district, may constitute criminal offenses (see Secs. 424 and 504, Pen. C.; People v. Battin, 77 Cal. App. 3d 635, 650, cert. den. 58 L. Ed. 2d 171; People v. Vallegra, 67 Cal. App. 3d 847, 874; People v. Sperl, 54 Cal. App. 3d 640, 661, cert. den. 50 L. Ed. 2d 97). Those activities might also constitute grounds for removal from office (Sec. 3060 et seq., Gov. C.), and may subject the directors of the district who sanctioned those activities to personal liability for improper expenditures of public funds (see Stanson v. Mott, 17 Cal. 3d 206, 226).

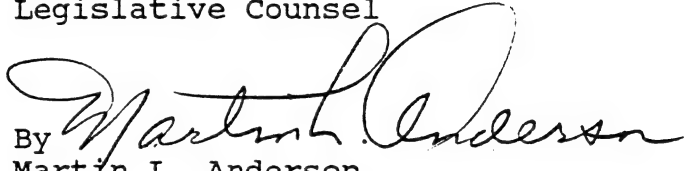
If evidence establishes that district employees received salaries from the district for the time during which they were engaged in private law practice, and used district facilities, equipment, and supplies for that purpose, they may be required to reimburse the district for the value thereof. How reimbursement might be obtained would depend upon the nature of

Mr. Thomas W. Hayes - p. 11 - #26772

the particular proceedings in which recovery was sought; that is, whether the district sought to administratively withhold the amounts from future salary payments, whether in criminal proceedings a judgment ordered an employee to make reparation (see Sec. 1203.1, Pen. C.), or whether the district sought damages from its employees in a civil suit.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Martin L. Anderson
Deputy Legislative Counsel

MLA:dfb

cc: Honorable Bruce Bronzan, Chairman
Joint Legislative Audit Committee

NEIL PETERSON
Office of
General Manager

March 3, 1988

Thomas W. Hayes
Auditor General of California
660 J Street Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

The AC Transit District has thoroughly reviewed the principal findings and recommendations provided in the draft report prepared by the Office of the Auditor General entitled: "The Alameda Contra Costa Transit District's Financial and Administrative Controls Need Improvement", and herein submits its response, on behalf of President Michael H. Fajans and the Board of Directors.

The District acknowledges that the principal findings are substantive and serious. However, we would like to clarify one statement regarding the amount of the anticipated deficit in the FY 87-88 budget. Based on information received by your staff prior to February 3rd, 1988, the amount of the deficit is estimated to be as high as \$7.1 million. Under the Financial Recovery Program presented to the Board of Directors on February 24, 1988, the District anticipates a deficit of \$1.2 million in FY 87-88 and adoption of a balanced FY 88-89 budget in June, 1988.

As for your recommendations, in most cases specific action to correct past practices have already been taken. Enclosed, please find a Summary of Principal Findings and Recommendations which details specific remedial actions and provides supporting background documentation.

To briefly illustrate, the following is a partial list of remedial actions already undertaken by the District:

BUDGET CONTROLS

- Revised the Budget for FY 87-88 to more accurately reflect variances and historical fluctuations.
- Adopted a Financial Recovery Program which will lead to a balanced budget in FY 88-89.
- Established a Budget Office.
- Currently recruiting a Chief Financial Officer.

Thomas W. Hayes
March 3, 1988
Page -2-

BOARD OF DIRECTORS AND OFFICERS

- Limited travel and entertainment expenses.
- Adopted stringent controls and procedures for submission of expense reimbursement claims.
- Banned personal loans from District funds.
- Prohibited use of District resources or facilities for any political purpose.

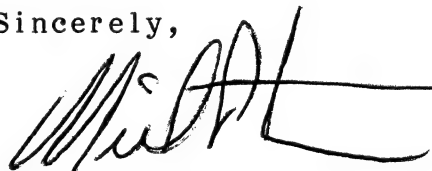
ATTORNEYS

- Banned District's attorneys from any private practice of law.

It is clear that there have been serious problems in this agency, and sound public policy dictates that they be addressed. In recent months, AC Transit has made significant progress in correcting its financial and administrative problems.

The Report of the Office of Auditor General has been an important catalyst in identifying and correcting the problems which have plagued this agency. The insights and professionalism of your staff have been a valuable tool in refocusing our mission to provide essential transportation services for the people of the East Bay.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Peterson', with a long horizontal line extending to the right.

Neil Peterson
Interim General Manager

NP:acs

NEIL PETERSON
Office of
General Manager

March 3, 1988

Mr. Thomas W. Hayes
Auditor General of California
660 J Street Suite 300
Sacramento, California 95814

Dear Mr. Hayes:

Please consider this letter as an addendum to the District's official response to the report on the District prepared by your office.

While we do not take issue with your Staff's report per se, we are concerned with one of the opinions rendered by the Legislative Counsel's office relative to the report. The purpose of this letter is thus to set forth our concerns in that regard.*

The District's legal staff disagrees with the narrowly drawn Legislative Counsel's opinion that the Attorney for the District could have a private practice understanding, but the staff attorneys could not. There is nothing in the PUC language which sets forth the Board's authority to establish a system of compensation which contains such a limitation. To the contrary, Section 24886 gives the Board full and unqualified authority in this regard.

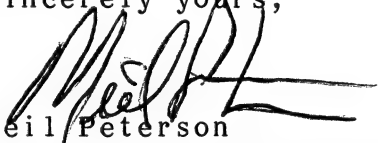
Further, although no written agreements between the Board and the attorneys exist, and although the manner and timing of the beginning of the private practice system is unclear, it can be argued that an implied agreement existed for two reasons: (1) because this system has been in effect since at least the early 1960's; and (2) because the attorneys were all told by the person who hired them that they were in fact allowed to have a private practice as long as it was limited and did not interfere with District business. The potential for a limited private practice alongside employment as an attorney for District and to entice them to stay, on the theory that the District is unique in having in-house attorneys to defend it in personal injury litigation, and that without such an incentive, it would be difficult to attract and keep good litigators due to their premium with private firms.

Under these "facts and circumstances", it is

*The Legislative Counsel's opinion regarding the private law practices is presented in Appendix E on pages 61 to 71.

submitted that there is no way a conclusion can be reached that violations of the penal code "may" have taken place. Further, because such a system has a rational basis and is within the authority of the Board to allow, there is no basis for the removal from office of anyone and no personal liability for any Director for allowing such a system to exist, notwithstanding the lack of clarity concerning the inception of the system.

Sincerely yours,



Neil Peterson
Interim General Manager

NP:smc

SUMMARY OF PRINCIPAL FINDINGS AND RECOMMENDATIONS

OFFICE OF THE AUDITOR GENERAL
STATE OF CALIFORNIA
DRAFT REPORT ON AC TRANSIT:

**"THE ALAMEDA CONTRA COSTA TRANSIT DISTRICT'S
FINANCIAL AND ADMINISTRATIVE CONTROLS
NEED IMPROVEMENT"**

WITH RESPONSES AND REMEDIAL ACTIONS
MARCH 3, 1988

NOTE: The Principal Findings and Recommendations of the Auditor General are printed in **bold type face**.

PRINCIPAL FINDINGS

The Alameda Contra Costa Transit District Needs to Improve Its Budget Controls.

The Alameda Contra Costa Transit District Has Weak Controls over Expenses for Its Board of Directors and Officers.

Attorneys at the Alameda Contra Costa Transit District Used District Resources to Conduct Their Private Law Practices.

ACTION TAKEN: SEE COVER LETTER

RECOMMENDATIONS: (BUDGET CONTROLS)

Develop well-documented and reliable estimates of revenues, subsidies, and expenses that reflect historical fluctuations for each month of the fiscal year.

ACTION TAKEN: On February 24, 1988 the Interim General Manager submitted a Financial Recovery Plan to the Board of Directors. Final adoption of the Plan is expected March 9th and will include a Revised Budget and financial statements which reflect monthly fluctuations. (SEE ATTACHMENT #1)

(Using these estimates) Develop a balanced or a surplus budget for fiscal year 1988-89

ACTION TAKEN: All budget actions currently being taken during FY 87-88 are designed to promote an improved budget process. Staff will present a balanced budget for FY 88-89 to the Board in June.

Maintain in the Finance Department all records that document the development of the budget so that the department can better control unbudgeted expenses.

ACTION TAKEN: Effective March 10, 1988 a Budget Office will be created. In the near term, the Office will report directly to the General Manager. When the Director of Finance is hired (the position is currently being recruited) he/she will have responsibility for the Budget Office. The District has made budget control a high priority, and has dedicated resources to a three month budget process for FY 88-89.

Develop and promptly submit to the Board of Directors accurate variance reports which identify the causes of significant budget variances. Take prompt corrective actions to remedy the causes of significant budget variances.

ACTION TAKEN: The creation of the Budget Office and hiring of a Chief Financial Officer (Director of Finance) will set the stage for regular tracking and reporting of any significant budget variance. In addition, the Revised Budget and improved monthly fluctuation reports will make variance reports more meaningful in the future.

Promptly negotiate an agreement with the Alameda County Transportation Authority so that the District can receive its allocation of tax revenues from Measure B.

ACTION TAKEN: While this item is not under the direct control of the District, staff level negotiations with the Transportation Authority are proceeding. The Legislative Counsel opinion cited in the report should help move this process forward, and it is anticipated the Authority will consider an agreement at its next meeting.

RECOMMENDATIONS (BOARD OF DIRECTORS AND OFFICERS)

Require all members of the Board of Directors, District Officers, and other District employees to read and abide by District policies regarding travel and entertainment expenses.

ACTION TAKEN: On November 18, 1987, and January 13, 1988, the Board of Directors approved changes in travel and entertainment policies. (SEE ATTACHMENT #2) These new policies are being incorporated into the Board of Directors Rules for Procedure, and the appropriate Management Procedures.

Direct all personnel involved in the review, approval, and payment of travel and entertainment expenses to reject for payment any expense report that does not meet the requirements of state law, board policy, and sound internal controls.

ACTION TAKEN: Current management practice requires that employee expense reimbursement forms be approved by the General Manager, or his designee. Board policies adopted on January 13, 1988 (SEE ATTACHMENT #2) require the expense reports of Officers and Directors be approved by the Controller. A Management Procedure will be developed to require that expense reports submitted by the General Manager be approved by the Controller.

Modify its expense report to include an attestation statement by the claimant similar to that used by the State of California on its expense reports, and require the claimants to sign the reports.

ACTION TAKEN: According to the January 13th policy adopted by the Board (SEE ATTACHMENT #2), claimants must sign all expense reports to receive reimbursement. The District has received a sample of the State of California expense reimbursement form and will incorporate the contents into its forms.

Adopt a policy for District Officers that defines the limits on District related expenses incurred in Alameda, Contra Costa, and San Francisco counties.

According to the November 18th, 1987 policy adopted by the Board (SEE ATTACHMENT #2), no overnight accommodations will be allowed in Alameda, Contra Costa, or San Francisco County, and Directors further broadened the limitation to include Marin, San Mateo, or Santa Clara County. In addition, a policy will be presented to the Board on March 9th to place the same limitations on Officers in the Bay Area Counties.

Adopt policies that prohibit District officers from approving their own expense reports; prohibit the purchase of airline tickets or other items for anyone other than Directors, Officers, and employees; and prohibit the payment of public funds to political functions or political organizations.

ACTION TAKEN: Policies adopted by the Board on January 13, 1988, (SEE ATTACHMENT #2), and proposed for adoption on March 9th will assure that no Director, Officer, or employee approves his/her own expense report. Additionally, policies adopted by the Board on February 10th (SEE ATTACHMENT #3) prohibit personal loans and specifically ban payments for any travel arrangements, or hotel accommodations for spouses, relatives, or children. Another policy adopted on February 10th (SEE ATTACHMENT #3) specifically prohibits the use of "District facilities, resources, telephones, equipment, or supplies for any election or campaign purpose whatsoever".

Recover all overpayments made to directors.

ACTION TAKEN: Upon determination of the amount of an overpayment, the District will bill the individual Director for that amount.

RECOMMENDATIONS (ATTORNEYS)

Develop and implement a policy on outside employment that prohibits the District's employees from using District resources for non District related business.

ACTION TAKEN: On February 24, 1988 the Board of Directors adopted a policy which specifically prohibits any attorney in the employ of the District from having a private law practice. In addition, all fees for an attorney who acts in the capacity of a court appointed arbitrator shall be paid to the District, not the attorney (SEE ATTACHMENT #4), and the telephone listings for attorneys have been dropped from the white and yellow pages of the Pacific Bell Directory (SEE ATTACHMENT #5). On March 9th, a policy prohibiting any District employee, Officer, or Director from using District resources for non-District related business will be presented to the Board of Directors.

Inform employees of the District's policy on outside employment.

ACTION TAKEN: All attorneys currently in the employ of the District have signed a statement acknowledging the policy prohibiting private law practice (SEE ATTACHMENT #6). Upon adoption, the policy covering all employees will be included in the management procedures handbook.

	APPROVED FY 87-88 BUDGET	REVISED PROJECTION 10/87	REVISED PROJECTION 2/23/88	PROPOSED RECOVERY PROGRAM 2/24/88	REVISED BUDGET 2/24/88
REVENUES: (000)	117.5	115.4	115.1	5.9	121.0
EXPENSES:	117.5	121.4	122.5	(.3)	122.2
SURPLUS/ (DEFICIT)	-0-	(6.0)	(7.4)		(1.2)

REVISED 02/24/88

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
1987-88 OPERATING ESTIMATE

	FISCAL YTD AS OF DEC. 31, 1987	PROJECTED					AMENDED		PERCENT TO TOTAL	ORIGINAL BUDGET
		JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	YEAR-TO-DATE PLUS PROJECTED TOTAL		
REVENUES:										
Farebox	15,040,448	2,503,328	2,394,241	2,611,581	2,542,264	2,410,514	2,520,394	30,022,771	24.81%	32,266,000
Other Transit Fares	43,054	1,058	5,494	5,135	8,405	25,327	8,079	96,553	0.08%	0.08%
BARTD Transfers	2,958,654	492,727	493,071	492,624	492,200	493,756	494,365	5,917,398	4.89%	5,923,000
Charter	9,587	0	0	0	0	0	0	9,587	0.01%	0.01%
Contract Service	3,891,425	615,337	595,568	663,939	623,024	632,959	636,482	7,658,734	6.33%	7,654,000
Advertising	267,500	47,917	47,917	47,917	47,917	47,917	47,917	555,002	0.46%	470,000
Interest Income	300,000	414,143 *	158,494	131,311	158,406	147,132	159,606	1,469,092	1.21%	1,000,000
Other Income	21,974	53,193	60,589	61,793	54,566	52,441	56,801	361,357	0.30%	0.30%
OPERATING REVENUES	22,532,642	4,127,703	3,755,375	4,014,301	3,926,781	3,810,047	3,923,645	46,090,493	38.09%	47,313,000
SUBSIDIES:										
Property Taxes	9,554,502	1,942,840	1,942,840	1,942,840	1,942,840	1,942,840	1,942,840	21,211,542	17.53%	19,109,000
State Oper. Asst. (STA)	216,930	87,282	87,282	87,282	87,282	87,282	87,282	740,622	0.61%	678,000
Sales Tax (1107)	7,618,998	1,269,833	1,269,833	1,269,833	1,269,833	1,269,833	1,269,833	15,238,000	12.59%	15,238,000
Sales Tax TDA	12,582,348	2,112,457	2,112,457	2,112,457	2,112,457	2,112,457	2,112,454	25,257,087	20.87%	25,282,000
Fed. Oper. Asst. Sec 9	3,434,387	572,398	572,398	572,398	572,398	572,398	572,398	6,868,775	5.68%	7,585,000
Other (Measure B)	1,134,498	744,250	744,250	744,250	744,250	744,250	744,252	5,600,000	4.63%	2,269,000
SUBSIDIES	34,541,663	6,729,060	6,729,060	6,729,060	6,729,060	6,729,060	6,729,063	74,916,026	61.91%	70,161,000
REVENUES AND SUBSIDIES	57,074,305	10,856,763	10,484,435	10,743,361	10,655,841	10,539,107	10,652,708	121,006,519	100.00%	117,474,000
EXPENSES:										
Operator Wages	18,565,329	3,323,819	3,005,642	3,088,127	2,927,497	3,167,547	3,010,186	37,088,147	30.35%	34,698,000
Other Wages	11,455,594	1,726,943	1,763,199	1,965,429	1,885,238	1,926,524	1,895,238	22,618,165	18.51%	24,269,000
Fringe Benefits	16,389,409	3,404,665	2,813,316	2,797,968	2,849,000	2,751,757	2,668,443	33,674,558	27.55%	30,671,000
Services	2,702,364	550,116	510,719	505,425	417,540	525,460	509,019	5,720,643	4.68%	5,214,000
Fuel and Oil	2,394,953	357,143	345,501	381,732	361,657	365,097	361,450	4,567,533	3.74%	3,645,000
Other Materials & Supp.	3,878,214	799,931	807,992	757,493	777,692	1,019,741	1,014,691	9,205,213	7.53%	9,016,000
Insurance	2,460,563	374,060	389,560	387,060	376,310	316,810	413,310	4,717,673	3.86%	4,897,000
Leases and Rentals	1,032,335	100,000	100,000	100,000	100,000	100,000	100,000	1,632,335	1.34%	1,464,000
Other Expense	1,484,316	294,167	227,167	202,167	259,167	278,167	239,167	2,984,318	2.44%	3,600,000
EXPENSES	60,363,077	11,080,304	9,963,096	10,185,400	9,954,101	10,451,103	10,211,504	122,208,585	100.00%	117,474,000
SURPLUS (DEFICIT)	(3,288,772)	(223,541)	521,339	557,961	701,740	88,003	441,204	(1,202,066)		0

* MOVEMENT OF FYTD RESTRICTED INTEREST TO UNRESTRICTED IS REFLECTED IN JANUARY 1988.

FAREBOX RECOVERY RATIO:	29.06%	31.28%	32.72%	32.81%	30.17%	31.79%	29.49%	32.51%
HOURS:	171,334	165,288	182,480	173,240	174,757	172,893	1,039,992	2,072,000
MILES:	2,415,193	2,335,716	2,583,043	2,446,008	2,469,488	2,444,593	14,694,041	29,499,000

PROPOSED RECOVERY PROGRAM

REVENUES **5,953**

EXPENSES

CUTS **1,212**

ADDS **929**

283

6,236

REVENUES: (000)

•	Measure "B"	3,331
•	Sale/Leaseback	312
•	Interest Income	570
•	Improvement Allowance	1,500
•	BART/STA demo	<u>240</u>
		5,953

EXPENSES:

ADDS:

. Increase pension contributions/ early retirements	34
. Increase service hours/adjust schedules	100
. Increase employee incentive awards system	53
. Added costs for BART demo project	450
. MAINTENANCE INVESTMENT	<u>292</u>
	929

SAVINGS

CUTS:

. March runcut/hire P.T.	575
. April/May Interim run-cut & service changes	210
. June runcut and service changes	32
. Capitalize equipment lease	150
. Reduction in travel & other expenditures	125
. Eliminate salary increases for management	100
. Improve A/P to capture discounts	<u>20</u>
	1,212



February 24, 1988

For Immediate Release

Interim General Manager Neil Peterson today (Feb. 24) presented AC Transit's Board of Directors with a comprehensive Financial Recovery Program designed to move the bus system out of its downward budget spiral and toward a solid fiscal footing.

The proposed series of actions will reduce the projected deficit for the current fiscal year from \$7.4 million to \$1.2 million, according to Peterson. The prediction is based, in part, on a review of AC Transit's finances by Booz, Allen & Hamilton, the national consulting firm which is assisting the District's management.

"This is the first time we have had a real handle on the numbers, and the ability to track them accurately", said Peterson. "There is no question: this District needs a better budget process. But we must take steps now to set the stage for achieving a fully-balanced budget in Fiscal Year 88-89 --- which is just four months away."

In addition to cutting costs and increasing revenues, Peterson's program calls for investing \$4.5 million immediately in bus maintenance programs to improve on-time performance and safety.

"The Financial Recovery Program will set this District on a course which adheres to basic business practices," he added. "The riders and taxpayers who support this District deserve nothing less. We are going to invest in maintenance, and we are going to invest in our people."

"AC Transit's ability to fulfill our role as a vital, viable element in the East Bay's economy and its transportation network hinges on our ability to get our financial house in order."

#

From: Mike Mills/Mike Curry
Phone: (415) 891-4873

RULES AND REGULATIONS

GOVERNING TRAVEL AND PERSONAL EXPENSES

Revised January 13. 1988

1. Purpose:

To establish basic policies relative to travel and personal expenses incurred by the Board of Directors, officers and employees of AC Transit in the performance of their duties; to define authorizations required to incur such expenses; to establish procedures for securing reimbursement.

2. Definitions:

- (a) The term "Directors" shall mean the elected Board of Directors of AC Transit.
- (b) "Officers" shall mean those enumerated in Article 6 of the Transit District Law, namely, General Manager, Attorney, Secretary.
- (c) "Official business: shall mean carrying out responsibilities and duties of the office or position held by Directors, officers and employees, respectively.

3. Authorizations:

- (a) Authorized District business for purposes of receiving \$100 per day compensation as outlined in Section 24908 of the Transit District Law, shall be limited to organizations in which the District holds memberships; otherwise approval of the Board of Directors is required for compensation. **(Adopted on 1/13/88)**

Attendance at meetings of the Board of Directors and any and all Committees of the Board of Directors is considered official business and is hereby authorized. Expenses incurred in attending such meetings shall be included when computing the maximum allowed under this paragraph.

Travel authorizations for Board Members shall be approved by the Board of Directors prior to incurring out-of-state travel expenses. In unusual or emergency circumstances, if prior Board approval is not possible, the President of the Board of Director may approve out-of-state travel. In such emergency situations, the travel authorization shall be acted upon at the next scheduled Board meeting. **Adopted on 1/13/88)**

- (b) Within the State of California other than the counties of Alameda, Contra Costa and San Francisco, San Mateo, Marin, or Santa Clara

Directors may claim reimbursement for expenses incurred while traveling on official business (as enumerated in Section 3(a) if prior authorization to travel is obtained from the Board of Directors. **(Adopted on 1/13/88)**

Officers and employees may claim reimbursement for expenses incurred while traveling on official business if prior authorization to travel is obtained from the General Manager.

- (c) Outside the State of California:

Directors, officers and employees may claim reimbursement for expenses incurred while traveling on official business if prior authorization to travel is obtained from the Board of Directors. **(Adopted on 1/13/88)**

- (d) The General Manager is authorized hereby to establish rules and procedures, consistent with provisions contained herein, to reimburse employees for expenses incurred in the performance of their duties.

- (e) Travel:

1. Trips up to 150 miles; may use private automobile. Reimbursement will be at 22 cents per mile. **(Adopted on 11/18/87)**
2. Trips over 150 miles; may use public carrier not to exceed coach class air travel. **(Adopted on 11-18-87)**

- (f) Accommodations while traveling on official District business:

1. Moderately priced accommodations/conference rate/government rate - single room rate. **(Adopted on 11/18/87)**
2. No overnight accommodations in the counties of Alameda, San Francisco, Contra Costa, San Mateo, Marin, or Santa Clara. **(Adopted on 11/18/87)**

4. In Lieu Reimbursements

- (a) In lieu of itemizing actual expenses for attending meetings of the Board of Directors and meetings of Committees of the Board of Directors a Director may claim a flat allowance of \$8.00 for each such meeting attended, except when two or more such meetings are held consecutively, only one such flat allowance may be claimed.
- (b) In lieu of itemizing actual expenses incurred while on official business within the counties of Alameda, Contra Costa, San Francisco, San Mateo, Marin, or Santa Clara, the President of the Board of Directors may claim a flat allowance of \$200 per month, as enumerated in Section 3(a).
 - 1. All business expenses, including moderately priced meals, (excluding per diem) will only be reimbursed with receipts and description of event and attendees.
- (c) Reimbursement for meals and other expenses while traveling on official business within the State of California (other than the counties of Alameda, Contra Costa, San Francisco, San Mateo, Marin, or Santa Clara) and outside the State of California, Directors, officers, and employees may elect to receive reimbursement for actual cost of:
 - 1. Lodging, including room taxes.
 - 2. Major transportation expenses such as airfare or automobile mileage between cities.
 - 3. Travel to and from airport, including airport limousine or taxi and airport automobile parking charges. However, public conveyance shall be used wherever possible for transportation between airport and meeting place). **(Adotped on 11/18/87)**
 - 4. Moderately priced business meals. Meals will only be reimbursed with documentation.
 - 5. Or elect to claim \$25 per day (per diem) in lieu of itemizing all expenses including meals, taxi, etc.

- (d) Per diem will be allowed in full on the day of departure and on the day of return without regard to the times of departure or arrival. Directors, officers and employees electing to travel by means other than air may claim no per diem allowances in excess of those which they would be entitled had the trip been made by air and may utilize either the per diem method or the itemization method of claiming reimbursement of expenses incurred during any single trip, but not both.

5. Travel Allowances

- (a) An advance not to exceed \$500 for authorized travel may be secured upon application to the Controller. Accounting of cash advances shall be done by means of vouchers and receipts on the same form as required for rendering claims for reimbursement. **(Adtoped on 11/18/87)**
- (b) Mileage for use of private cars on official business will be reimbursed at the rate of fifteen cents (22¢) per mile or at the rate per mile allowance established by the Internal Revenue Service. Reimbursement for such use outside the counties of Alameda, Contra Costa and San Francisco shall not exceed an amount equivalent to the coach-class airfare. **(Adopted on 11-18-87)**
- (c) Airfares for authorized travel will be reimbursed at coach fare rate.
- (d) Public Conveyance shall be utilized wherever possible for transportation between airport and meeting place. **(Adtoped on 11/18/87).**

6. Reimbursements

- (a) The Controller shall approve all Expense Reports and travel advances prior to any disbursement of funds. **(Adopted on 1/13/88)**
- (b) Directors claims for reimbursement for travel expenses and meetings shall be prepared and signed by individual Board Members on an Expense Report form and approved by the Controller, to be presented for payment monthly or upon completion of a trip (but no longer than 30 days after the event). **(Adopted on 1/13/88)**

- (c) Officers and employee claims for reimbursement shall be rendered on an Expense Report form and approved by the General Manager and Controller, and shall be presented for payment monthly or upon completion of a trip (but no longer than 30 days after the event). **(Adopted on 1/13/88).**
- (d) Claimants shall itemize the expenditures, provide brief explanations of the purpose and shall attach receipts or vouchers for all expenses including transportation, lodging, meals, taxi, etc., that can be supported by documentation.

7. Credit Cards:

No bank, telephone or gasoline credit card will be issued to any Director officer, or employee of the District. An AC Transit credit card may be issued by the Controller for use on a one event basis. **Adopted on 11/18/87)**

8. Budgeting & Reports

1. Travel budget to be set at \$4,000 per Director per fiscal year. If travel exceeds \$4,000 per Director, Board approval is required. The President of the Board of Directors shall be budgeted an additional \$2,000 for travel per fiscal year. **(Adotped on 11/18/87)**
2. Quarterly reports on travel expenses by Directors, officers and employees shall be provided. **(Adopted on 11/18/87).**
3. No District personnel will be reassigned from normal duties to provide transportation services to or from airports or business meetings or used in any capacity outside thier job responsibilities. **(Adopted on 1/13/88)**
4. No use of District personnel or equipment for personal use. **(Adopted on 1/13/88).**

NOTE:

Resolution No. 648, referenced as Exhibit A and attached hereto, amended the Rules and Regulations Governing Travel for the Board of Directors, and was adopted by the Board on Wednesday, January 13, 1988.

Employment Contract for Appointed Officers of the Board

An employment contract detailing the duties, responsibilities, authority, compensation and evaluation for each of the three appointed officers of the District; namely, the General Manager, Secretary and Attorney, shall be required. The duration and conditions of each contract will be negotiated at the time of hire. Attached is a sample of an employment agreement. Nothing in this policy in any way impinges on the appointive and removal authority otherwise provided the Board in the Transit District Law.

Board/Staff Relations

The Board of Directors shall deal with District employees solely through the General Manager, except for inquiry purposes.

The Board shall not give orders to any District employee under the jurisdiction of the General Manager, nor shall they attempt to coerce or influence the General Manager in matters relating to any contract, purchase or any other administrative action; nor in any manner direct or request the appointment of any individual to, or removal from, his/her position by the General Manager. Additionally, no Board Member shall be involved in the recruitment and selection process for any management position.

Adopted by Board 2/10/88

Contracts for Services

Pursuant to Article 4, Section 24887, of the Transit District Law, all outside Consultant contracts will include a clause which states that the professional service or the performance of work or services required by the District cannot satisfactorily be performed by the regular employees of the District.

Interest in Contracts

Pursuant to the provisions of the Transit District Law, Article 2, Section 25722, and Government Code Section 1090, no Director shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the Board, or in the profits to be derived therefrom.

Political Activity

No Board member shall solicit or obtain from any District employee a contribution of services, money or any other thing of value for any election or campaign purpose. Additionally, the use of District facilities, resources, telephones, equipment or supplies is prohibited for any election or campaign purpose whatsoever by either Board members or staff.

Campaign Expenditures

Pursuant to Resolution No. 583 and any subsequent resolutions by the Board of Directors regarding a Candidate's Statement of Qualifications for the Board of Directors, it shall also be required that a candidate for the Board of Directors satisfy all outstanding debts incurred by the District in printing and handling the candidate's statement within thirty (30) days of presentation of a bill from the District.

Personal Loans

No disbursement of District funds shall be made as a personal loan to any employee, Officer, Board Member or their family. This prohibition includes, for example, securing and paying for travel arrangements and hotel accommodations in advance of reimbursement for Board members' spouses, relatives and children.

In addition to implementation of the proposed changes to the Rules for Procedure Manual, the General Manager is directed to report and make recommendations to the Board of Directors regarding guidelines for the Risk Management Department, and to make recommendations regarding the hiring of an Internal Auditor.

February 24, 1988
GM Memo 29-88

TO: Administrative Committee
FROM: Interim General Manager
SUBJECT: Board of Director's Policies Regarding the
Legal Department

The following is a suggested policy relating
to the District's Legal Department.

Effective immediately, the District attorneys
may not take on any new private legal work. Between
now and May 1, 1988, the attorneys must complete or
dispose of any private matters which pre-existed this
meeting. "After May 1, 1988, no attorney of the
District shall engage in the private practice of law."

District attorneys shall be allowed to serve
the Courts as judicial arbitrators, as long as such
arbitrations do not become excessive. The fee paid by
the County to the arbitrator shall be requested in the
name of the District and shall be turned over to the
District."

This subject will be brought to your
attention for consideration at the meeting of the
Administrative Committee scheduled for 3:45 p.m.,
Wednesday, February 24, 1988.

Neil Peterson

NP/smc

cc: Board of Directors

Adopted by Board 2/24/88

February 29, 1988

TO: ACTING ATTORNEY FOR THE DISTRICT
FROM: Communications Coordinator
SUBJECT: Yellow & White Page Advertising - Telephone Directories

Per our recent telephone conversation, the District has decreased the length and number of yellow and white page listings in upcoming area telephone directories.

As you know (copies forwarded earlier this month), the letters also direct PacBell to drop any and ALL Attorney listings billed to AC Transit.

If you have any questions, please give me a call.



cc: Marketing Manager
Director of Administration

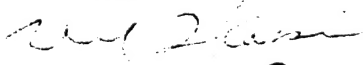


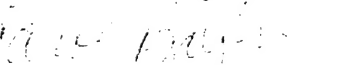
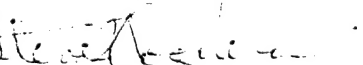
BOARD POLICY CONCERNING PRIVATE
PRACTICE BY DISTRICT'S ATTORNEYS

(Unanimously passed at Board Meeting of 2/24/88)

"Effective immediately, the District attorneys may not take on any new private legal work. Between now and May 1, 1988, the attorneys must complete or dispose of any private matters which pre-existed this meeting. After May 1, 1988, no attorney of the District shall engage in the private practice of law.

District attorneys shall be allowed to serve the Courts as judicial arbitrators, as long as such arbitrations do not become excessive. The fee paid by the County to the arbitrator shall be requested in the name of the District and shall be turned over to the District."

The undersigned have received a copy of the above-stated Board Policy and understand its contents:

	<u>Name</u>	<u>Signature</u>	<u>Date</u>
1.	Richard L. Kassiss		2/29/88
2.	James L. Ghidella		3/2/88
3.	Darrel T. Jones		4-31/88
4.	Carol Babington		3/4/88
5.	Steve Noguera		3/11/88

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps